VII-VIII-IX

THE RIVER TOWNS

OF

CONNECTICUT.

JOHNS HOPKINS UNIVERSITY STUDIES
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HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.—*Freeman*

SEVENTH SERIES
VII-VIII-IX

THE RIVER TOWNS OF CONNECTICUT

A Study of Wethersfield, Hartford, and Windsor

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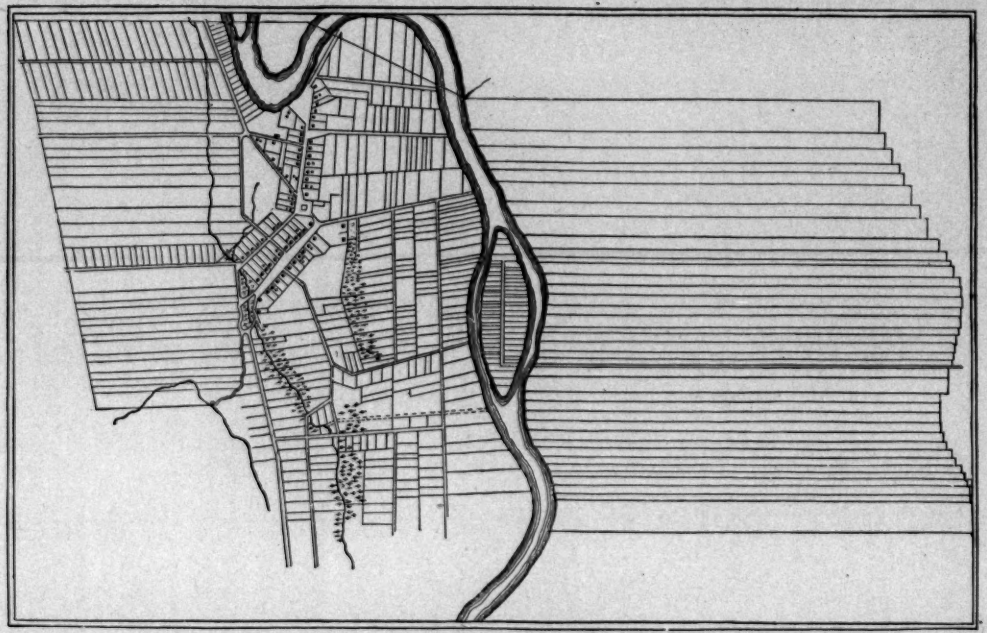

EARLY ALLOTMENTS IN WETHERSFIELD.

The above represents the lands recorded under date 1640–41. On the extreme left are the West Fields, on the right, across the river, Naubuc Farms, known also as the Three Mile Purchase; in the centre the Great Meadow and Plain with their various divisions. The latter allotments cannot in every case be absolutely ascertained, as the records are often vague and faulty. For further explanation see page 42. Special thanks are due to Judge Adams for the use of his original outline of the town, and other material aids.

THE RIVER TOWNS OF CONNECTICUT.

I.

EARLY SETTLEMENTS.

The Dutch and English.

The spirit of trade inherent in the Teutonic life, and given broader and newer fields by contact with an unopened country, led to the first and more isolated settlements in the Connecticut valley. The English sense and mother-wit, sharpened on the Dutch grindstone, laid the foundation for the future Yankee shrewdness, so proverbial in all New England, and peculiarly so in the land of steady habits. This land, "excellently watered and liberal to the husbandman," was, up to 1632, chiefly conspicuous for its hemp, beaver, and petty Indian tribes. It lay, almost unknown, fairly between the settlements of the Dutch at New Amsterdam and Fort Orange, and of the English at Plymouth and Massachusetts Bay, and offered a tempting field for the first quarrel between the kindred nations. The same causes, the occupying of the vantage-ground, and the natural jealousy aroused by mutual successes, were at work here, as a hundred years later with the French in the larger territory of the Ohio; and here, as

The writer wishes to express his indebtedness, in the preparation of this monograph, to Judge S. W. Adams, of Hartford, whose previous labors in the same field have been of the greatest service; to Miss Mary K. Talcott, of Hartford, who has placed many valuable notes at his disposal and has read a considerable portion of the MS., and to the town clerks of the several towns, especially Mr. Albert Galpin, of Wethersfield.

there, the English displayed the greater diplomacy and covert determination. As elsewhere, the first discoveries were made by another nation; but the same prowess which brought about the greater final result in the settlement of America, led to the final occupation of this disputed territory by English communities and the reaping of its fruits by English hands. It was a bloodless victory, and the issue, though long debated, was finally decided by the weight of numbers and the tenacity of the English nature. The Dutch were merely traders with the Indians, while the English were wanderers seeking a permanent home.[1]

Until the meeting of the forerunners of each nation upon the banks of the Connecticut river, the relations had been eminently peaceful, and the Dutch had congratulated by letters and messengers the colonists of Plymouth on their prosperous and praiseworthy undertaking, and had offered to trade with them as honored good friends and neighbors. On the departure of De Brasières from Plymouth, after his visit in 1627, Governor Bradford addressed a letter to Minuit, the Dutch governor, cautioning him against allowing his people either to settle where they had no title or to extend their trade too near the English plantation. In the early days of their peaceful relations the Dutch had often recommended the Fresh River, "which is known by the name of Conightecute River," as offering peculiar advantages for plantation and trade, which information was treasured up for future use.

About this time the condition of Indian affairs in the valley was bringing the question of settlement more definitely to a head. The invading Pequots, who, after their retreat before the Mohawks from the Hudson river, had passed along the Connecticut coast and conquered the shore tribes, now made war on the weakly united Indians living to the north on both sides of the Connecticut river. A body of these conquered

[1] Dexter's New Netherland and New England, New Haven Hist. Coll. III, pp. 443–469. Hazard, State Papers, II, containing the correspondence, 1644–1654, particularly pp. 212–218 and pp. 262–267.

Indians, banished from their own hunting grounds, made their way to the Plymouth colony, and endeavored to rouse the interests of the English in their behalf by extolling the advantages of the river for trade. This tale, containing two points for themselves and one for the English, was often repeated, and as the time was opportune for the latter—as they had on hand a surplus of commodities and a need for greater profits to meet their engagements—the settlers determined to explore for themselves the region recommended by the Indians. The expectations were not fully realized, however, for, though they found it, as Bradford says, "a fine place," yet trade was dull. But it might be stimulated, and the Pilgrims, with always a keen eye, recognized the latent truth of the Indians' report, and planned to build a trading house and to invite their fellow-colonists at the Bay to share in the advantages. In the meantime, the Indians, not satisfied with the conservative policy of the Plymouth people, had appealed to the other colonists. In 1631 a sagamore at Boston with two companions had proposed to the English there to come and plant the country, with the unexpressed but evident desire that they should assist them to recover their lost possessions. "The governor entertained them at dinner, but would send none with them," and nothing was done in compliance with their request. During this episode, the men at Plymouth had taken action and had sent a number of men to spy out the land. Among these was Mr. Winslow, the governor, "whoe descouvered the fresh river when the Duch had neither trading house nor any pretence to a foot of land there."[1] In 1633, partly in consequence of the knowledge already gained and partly because of his standing in the colony, he, with Mr. Bradford, formed the commission which went to the Bay to confer regarding a partnership in the hemp and beaver trade. This conference was without result, for the independent men of Boston, wanting all or nothing, refused any coöperation,

[1] Hazard, State Papers, II, p. 215.

evidently thinking to thus discourage an enterprise the advantages of which they must have foreseen. The reasons given for this attitude are not in harmony with their spirit and courage thus far shown, viz. fear of warlike Indians, ice and swift currents, shallowness of the river, and lack of trading goods. Plymouth, however, was in earnest and prepared to carry out what was already determined upon, and thus its colonists were destined to be the "first English that both discovered the place and built in the same."

By this time the Dutch had waked up. On the 8th of June, 1633, a month before the above negotiations, they had purchased from the Pequots, lands on the river where Hartford now stands. On hearing of the plans of the Plymouth colonists, they set about the completion on these lands of a "slight forte," said to have been begun ten years before,[1] and equipped it with two small cannon and a force of men, probably few in numbers. This fort they called the "Good Hope," and with this military foundation they threatened to stop in their progress the stout gentry and yeomanry of England. But the fatal day for the Dutch had arrived, and their control in the Connecticut valley was nearing its end. Much as we may decry the high-handed manner with which the English treated their claims, based on a perfectly legal grant (as grants were then made) to the West India Company by the States General of Holland, we must confess it to our liking that matters were never allowed, through a firmer establishment of the Dutch in Connecticut, to approach a condition such as to require a resort to arms for their settlement.

The bark dispatched by the colony of Plymouth had a double danger to contend with. Having espoused the cause of the original Indians against the Pequots, they had gained the enmity of that powerful tribe, which was not likely to be

[1] Mr. Savage doubts this (Winthrop's Journal, p. 118, note 1), and the Dutch give the date as 1633 in their complaint.

appeased by the fact that, according to the understood bargain, they bore with them in their craft Attawanott and other banished sachems, for reinstatement. Holmes, the Pilgrim captain, sailed up the river and passed safely the Dutch fort. The threats of its builders were as smoke without ball, though from behind its slender earthwork the garrison threatened and blustered. The resolute Holmes declared he had a commission from the Governor of Plymouth, and where that commission bade him go he was going, and go he did. He bought land of the sachems he carried with him, landed with a picked garrison, put up the ready-made frame-house prepared at Plymouth, sent the vessel home, and had his house well surrounded with a palisade before the Dutch could take any definite action. This was Saxon pluck; but if herein the Plymouth men showed themselves as wise as serpents, they afterwards displayed the ability of being as harmless as doves.

But there was still to follow another exhibition of Dutch bluster. Seventy men, girt about with all the panoply of war and with colors flying, appeared before the sturdy little trading house at the mouth of the Farmington. They marched up, but, fearing to shed blood, consented to a parley and withdrew. For the second time they learned that the English were not to be frightened away, and they apparently cared too much for their precious lives to try the ordeal of battle.

The Forerunners, Oldham and Other Traders.

Hartford and Windsor had each now its military stronghold, of which we have still a survival in the names "Dutch Point" and "Plymouth Meadow." But as yet without other than Indian inhabitants were the wide-stretching lowlands of Wethersfield. Here the great river flanking the plain on the east, and bending its course at the northern extremity of the great meadow, formed a double curve, whose upper arc cutting deeply into the gently sloping ridge which formed the site for the future town, again turned abruptly northward

toward the forts of the Dutch and English. Up to 1633 no white man had set foot on these tempting fields. Adrian Blok, when in 1614 he explored the river as far as Hartford, saw there only Indian villages belonging to the Sequins; the later Dutch adventurers were traders, not agriculturists, and they sailed past the fruitful soil for a spot better capable of defense; Holmes had too definite a plan in his mind and too many other things to think of to be allured from the express commands of the Governor of Plymouth to go and settle above the Dutch, so that it was left for a restless English trader to first appreciate the possibilities of this quiet Indian valley. John Oldham, for many years a thorn in the flesh for the strait-laced colonists, came from England in the Anne in 1623; he was expelled from Plymouth as an intelligencer and creator of faction in 1624; was at Nantasket until the following year, when he returned to Plymouth without permission; again misbehaving himself, he was deliberately thumped on the breech out again, and went to Virginia, where through the agency of a serious sickness he reformed, acknowledged the hand of God to be upon him, and came back to Massachusetts Bay to live a respectable life. In 1631 he became a freeman of the colony, the privilege only of church members, and in 1632 owned a house in Watertown. This was the man who, early in September, 1633, started out from the Bay with John Hall and two other companions to trade in Connecticut. Plunging boldly into the wilderness, so soon to be made historic by a more famous emigration, they pursued a winding itinerary, in order to take advantage of Indian villages where they might lodge at night. On reaching the valley they were hospitably received by the sachem, possibly the one who had already visited Boston, and on returning, carried back to that colony beaver, hemp, and black lead. Regarding the southernmost point reached by Oldham we have no information. The distance to Connecticut was reckoned by him as one hundred and sixty miles. Allowing for the necessary windings incident to a journey through a

primeval wilderness, and supposing him to have reached for greater security the river at a point due west from the Bay, perhaps near Springfield, and then to have followed its course southward, the above impression which he received of the distance is easily explainable. That Oldham and his companions penetrated as far south as the then unoccupied sites of Hartford and Windsor is undoubted, and that he was the first white explorer of the lands still farther south in the present Wethersfield township, further evidence gives good reason to believe.

This overland journey of Oldham was with little doubt instigated by the desire of the colony to learn more of that promising land which, in the presence of the Plymouth representatives, they had so disingenuously decided not to meddle with. It looks a little like duplicity on the part of our Puritan fathers that, at the time of the bold, single-handed expedition of the Pilgrims in which they had refused to take part, they either dispatched or encouraged two private and almost covert expeditions into the same territory. For a month after Oldham's return, the bark Blessing, built at Mystic in 1631, explored the coast of Connecticut and Long Island, examined the mouth of the river, and appeared at the Dutch settlements on the Hudson. The Massachusetts men did nothing by halves. But if the reports of Oldham and the sailors of the Blessing were favorable to their purpose, those of Hall, who with a few others made a second exploration of the valley shortly after, must have proved somewhat discouraging. The latter encountered all the miseries of intense cold, loss of their way, and small-pox among the Indians, in consequence of which they had no trade. The only grain of comfort to be derived therefrom was that the small-pox had carried off most of the Indians, whose numbers had been up to this time a serious obstacle.

Uneasiness at the Bay.

No further attempts at settlement were made this year, but in the meantime affairs at the Bay were approaching a crisis unique as it was remarkable and momentous in its consequences. The antecedent events are most important as adding their weight in bringing about a movement whose causes lie deep-hidden in the history of Massachusetts Bay colony. Newtown, one of the neatest and best compacted towns in New England, lay fairly between Watertown on the west and Charlestown on the east, being in form, as Johnson says in his Wonder-Working Providence, "like a list cut off from the broadcloth of the two forenamed towns." In consequence, its people were somewhat crowded. In 1633 its population increased rapidly, and the question of removal or enlargement began to occupy their thoughts. There were twelve towns or churches in the colony, and the steady though not rapid accessions from England, while certainly not sufficient in quantity to cause the settlement to be overstocked, were such in quality as to create a strong-charactered minority. As will be seen, the mere extension of their narrow quarters was not enough to satisfy the men of Newtown, and this fact points to some deeper reasons for removal than those openly given. Whatever the causes, signs of discontent are evident from the time of the arrival of Thomas Hooker in 1633. By 1634 these discontents had gained such prominence that a complaint was made to the first general court of delegates by the people of Newtown, and leave was asked to remove or to enlarge their boundaries. This was granted provided they did not interfere with any plantation already established. Having gained her point, Newtown at once sent certain of her number to make explorations and select suitable places for removal. They at first seem to have had in mind a northerly emigration, and visited Agawam (Ipswich) and the Merrimac river; but evidently the reports of Oldham and others had been sufficiently favorable to turn their thoughts to the Connecticut valley, for in July, 1634, six Newtowners went

in the Blessing to explore the river, "intending to remove their town thither." Whether Oldham was one of these six is doubtful, as he lived in Watertown, though not at all improbable, as he was the chief authority among the neighboring towns on all Connecticut matters. This open intention to remove beyond the jurisdiction of Massachusetts caused a revulsion of feeling—certainly natural enough—and in September the subject came up again for discussion. Newtown wished to remove to Connecticut and prayed for leave to carry out her purpose. The application met with strong opposition from the deputy governor and a majority of the assistants, but of the representatives, fifteen were in favor of the motion to ten against, a fact which showed that the sympathy of the representatives of the people lay with the people themselves. Rather than make trouble in the present heated state of the controversy, Mr. Hooker postponed the intended migration until the bitter feeling should have passed away and a more favorable opportunity should offer. A day of humiliation was appointed and the derelicts indirectly reproved in a sermon by Mr. Cotton. But whether it was the humbleness engendered by the day of prayer or the penitence developed by Mr. Cotton's discourse, or a politic restraint of their feelings in view of the adage that "all things come to him that waits," the people of Newtown accepted the grants of meadow and river bank offered by Watertown and Boston for an extension of their territory.

Settlement of Wethersfield, 1634.

During the interim before the next meeting of the General Court there is some evidence of an exodus from Watertown to Connecticut. It is based on indirect rather than on direct evidence. There has long been a tradition that a few Watertown people came in 1634 to Connecticut and passed a hard winter in hastily erected log huts at Pyquag, the Indian name of Wethersfield. Tradition is apt to contain a kernel of truth, and in this case further evidence seems to substan-

tiate it. In case such a movement took place from Watertown, whether because of the decision of the Newtown people to remain, or independent of it, it is unlikely that Oldham would have failed of coöperation with the movers, if he was not actually the instigator of the plan itself. Does the evidence allow his absence from Massachusetts at this time? In 1634 he was elected first representative from Watertown, and was present at the meeting of deputies in May of that year. His continued presence at the Bay can be traced to September 25, when he was appointed a member of two important committees. His name is not again mentioned until the next year, when, according to the records, he was, in May, 1635, appointed to act again as member of an investigating committee.[1] After his service the previous year he was not again elected deputy, and this may have been, as Dr. Bond suggests, because of his open intention to remove to Connecticut,[2] as that intention, if carried out at any time before the next meeting, in May, 1635, would incapacitate him from serving as deputy at that court. Thus it is quite possible for him to have been away from Massachusetts at this time. Is there any trace of his presence in Connecticut between September, 1634, and May, 1635? If so, which is the more probable date? His presence in Massachusetts in 1635 can be readily accounted for by supposing a return from Connecticut after the traditional winter of suffering at Wethersfield. For light on this point we must turn to the records of the Connecticut colony. There we find the entry of the settlement of the estate of Mr. John Oldham (he was killed by the Indians in July, 1636) in the records of a court held at Watertown (Wethersfield) in September, 1636. Among them is the following: "It is ordered that Thurston Rayner, as he hath hithertoo done, shall continue to look to and preserve the corn of Mr. Oldham, and shall inn the same in a seasonable

[1] Mass. Col. Rec. I, pp. 116, 125, 145.
[2] Bond, Hist. of Watertown, p. 864.

time."[1] Two facts are noticeable in this entry: first, that Rayner, who arrived in 1635, was given charge of Oldham's unharvested grain because he had performed a similar office before; and, secondly, that Oldham could not have been continuously present at the plantation, but seems to have been accustomed to take occasional journeys away. The first fact points to a harvested crop of grain the year previous, which, if winter-sown, would argue in favor of his presence there during the winter of 1634-5, or, if summer-sown, a later appearance in the spring of 1635. We are then assured of his presence there at one or the other of these two dates. The second fact would allow his absence in 1635 in case the settlement was made the fall previous. This is not at all unreasonable. He left a family at Watertown; retained property there, an inventory of which is found in the Massachusetts records after his death. These double interests would have been more than likely to have required his presence at times in each plantation, and he was sufficiently acquainted with either route—overland or by sea—to have taken the journey without great inconvenience.[2] The lands held by him in Wethersfield were most favorably situated and of a nature to warrant the presumption that he, as leader of a party, had the first selection, while the eight adventurers accompanying him took adjoining lands farther south in a less convenient situation. We know that in England at this time the winter-sowing of wheat between Michaelmas and the last of November was the rule rather than the exception, the former date marking the beginning of the farming year. Mr. Bradford seems to imply the same when he speaks of those coming over in May as being obliged to wait "upward

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[1] Conn. Col. Rec. I, p. 3.

[2] It is likely that Mr. Oldham made frequent trips back and forth between the two colonies. See the letter of Mrs. Winthrop to her son, at that time Governor of Connecticut, dated April 26, 1636, in which she speaks of sending (from Massachusetts Bay) a letter by Mr. Oldham to Connecticut. Winthrop's History, vol. I, p. 466.

of 16. or 18. months before they had any harvest of their own,"[1] evidently referring to a winter-sowing of wheat, which with barley formed the chief staple. All this we think leads to the confirmation of an autumn settlement in 1634, but another bit of evidence is at hand. A town vote, under date August 30, 1711, relating to a suit brought against the town for possession of the stated commons and sequestered lands, has the following explanatory clause: "The town having possessed and enjoyed said lands for seventy and seven years last past or more, viz., themselves and their predecessors of the town of Wethersfield, and having measured and laid out the said commons or sequestered land more than twenty-seven years last past, and some of the land more than thirty years last past."[2] By deducting these years from the date of the vote we find that the town in 1711 considered the date of her own settlement to be 1634, and as in the case of the other years mentioned the statement is absolutely correct, there is no reason for doubting the truth of the first; if this be tradition, it is of a very fresh and trustworthy sort, and assists materially in forming our conclusions.

With this then as our evidence, we venture the following historical sequence. Shortly after the September meeting of the Massachusetts General Court in 1634, Mr. Oldham led a party of eight adventurous men to the point reached by him on his overland journey in 1633, where he was impressed by the fertility and beauty of the river meadows and the fact of a non-occupation by white men. Here huts were erected, the ground prepared and grain sown along the lowest eastern slope of the ridge, half a mile from the river, out of reach of the spring freshets. In the following spring Mr. Oldham returned to Watertown, and very likely his presence once more among the uneasy people instigated the petition which was presented by them to the court held in Newtown, May 6, 1635, asking leave to remove. A favor-

[1] Bradford's History, p. 248.

[2] Weth. Records, I, p. 292-3.

able answer was given to this, and Mr. Oldham accompanied a second band of settlers, some fifteen or twenty in number, who settled in Wethersfield, near the others, to the westward. We are without doubt warranted in the statement that of the three towns composing the Connecticut colony, Wethersfield was the first occupied by settlers and planters who became an integral part of the later community. It is interesting to note that this fact is acknowledged in the general code of 1650[1] and in the manuscripts of Mr. Mix (1693–1737).[2] The existing state of things is, then, a Dutch fort of doubtful permanency at Hartford; a strong, well-established palisaded block-house at Windsor; both of these engaged in trade with the Indians; and a small handful of planters—some twenty-five or thirty—in the meadows of Wethersfield—all in the midst of half friendly and hostile Indians.

Plymouth and Dorchester. The Lord's Waste.

But a rift once made for the outpouring of the tide of emigration and the efflux became rapid. A month after permission was granted to the Watertown people a like leave was given to those at Dorchester, with the same proviso regarding jurisdiction. Within two months—by August 16, 1635—a settlement was made by them on the Connecticut. Their

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[1] In the section "Bounds of Towns and Perticular Lands" is the following: "It is ordered .... That every Towne shall set out their bounds .... and that once in the year three or more persons in the Towne appointed by the Selectmen shall appoint with the adjacent Townes and renew their markes .... the most ancient Towne (which for the River is determined by the courte to be Weathersfield) to give notice of the time and place of meeting for this perambulation." Col. Rec. I, p. 513.

From the point of view of a habitation by white men, Hartford was first occupied by the Dutch; from the view of occupation by Englishmen, Windsor can claim to be the earliest settled; but from the point of view of settlement by Massachusetts Bay people, by agriculturists and permanent colonists, Wethersfield has undoubted right to the title. On Windsor's claim see article by J. H. Hayden in Hartford *Courant* for September 26, 1883.

[2] Trumbull, Hist. of Conn. I, p. 49, note.

unfortunate selection of the lands adjoining the Plymouth block-house led to a lengthy dispute and considerable ill feeling between the two colonies. The one claimed priority of possession and rights acquired by purchase, and warned the new-comers against trespassing. The latter, disregarding these stable claims, plead the providence of God as having tendered the place to them "as a meete place to receive our body, now upon removal." But the Pilgrims were not inclined to accept this somewhat illogical reasoning, thinking the "providence of God" to be a convenient pretext, not altogether reliable as argument. In their rejoinder they say what was not far from the truth, though edged with a Pilgrim bitterness: "We tell you still that our mind is otherwise, and that you cast rather a partiall, if not a covetous eye, upon that which is your neighbours and not yours; and in so doing, your way could not be faire unto it. Looke that you abuse not Gods providence in such allegations." The controversy continued, with the passage of many letters back and forth between them; but the Pilgrims, rather than make resistance, though they had been bold enough to have done so, came to an agreement with the others, first compelling a recognition of their right to the "Lord's Waste," as the Dorchester men called the land in dispute. This recognition proved something of a stickler to the authorities at home, and Mr. Winslow the following year went to Dorchester to settle the controversy. Winthrop here gives another exhibition of Puritan disingenuousness. As the claim of jurisdiction was too doubtful to maintain, he falls back on the assertion that the Plymouth traders had made their settlement through leave granted by Massachusetts, after the latter had refused to join in the undertaking. The leave granted is certainly gratuitous on the part of the Puritans, for Plymouth, settled ten years before the colony of Massachusetts Bay, did not come into her jurisdiction until 1692. Perhaps we may ascribe this rather peculiar sense of equity to the workings of a manifest destiny, to which it is con-

venient to ascribe so much; but if we do so, then there is reason to believe that such destiny does not always follow along the lines of greatest justice. The means for creating an illustrious future are not always in accord with present happiness and harmony. The controversy was finally ended two years after by a compromise, in which Plymouth, to have peace, yielded all save the trading house and a sixteenth of the purchased land to the Dorchester people (inhabitants of Windsor), with a reservation, however, to the southward for the Hartford adventurers, who were Newtown people, and about twelve in number. This disputed "Lord's Waste" is now the town of Windsor. Of course the lands surrendered were duly paid for (price £37 10s.), but the "unkindness" of those who brought on the controversy "was not so soon forgotten." While this dispute was in progress—for the above compromise advances our narrative two years—a third claimant appeared. This was the Stiles party, which, sent from England by Sir Richard Saltonstall, one of the Connecticut patentees, had arrived in Boston, June 16, for the express purpose of settling in Connecticut. They were sent out from the Bay ten days later, and probably arrived some time after the 6th of July. This party of servants numbered sixteen, and included three women, the first of their sex in the Connecticut valley. They at once laid claim to a share in the "Lord's Waste," but the claim was evidently not pushed with vigor in the face of such opposing odds, and, with wise discretion, they retired a little farther up the river. Their little plantation was afterwards included in the Windsor township, and its members shared in the distribution of lands in 1640, in September of which year Francis Stiles was admitted a freeman.

Hartford. A Hard Winter.

But our list of those who were to endure the seasoning of a most rigorous winter is not quite complete. We have already mentioned the reservation of a moiety of land, as one

condition of the settlement of the controversy regarding the "Lord's Waste," for certain emigrants from Newtown, who had settled on what was later called the "Venturer's Field" in Hartford. These settlers did not arrive all at once, but evidently formed a part of the Massachusetts men whom Brewster states, under date July 6, 1635, as coming almost daily. Few in numbers, they took no part in the unfortunate controversy between Dorchester and Plymouth. Either because of their weakness, or because of the patient, uncontroversial spirit which they displayed, they were kindly and generously treated by Holmes and his party, who reserved for them in the condition of sale in 1636—the sale took place the next year—a portion equal to that retained by themselves. This land the men of Newtown took gladly, desiring no more than could be conveniently spared them, thus gaining for themselves the approbation of their neighbors, and making the way easier for the later exodus of the Newtown Hookerites. Even the first comers hallowed the ground, "the birthplace of American democracy," with a godly spirit.

As to the question of jurisdiction the problem is simple. All were legally trespassers.[1] In the absence of a grant by the council of Plymouth of this territory to the Earl of Warwick, which grant is now shown to be a figment of the brain,[2]

[1] Johnston, Conn., p. 10; Bronson, Early Government, New Haven Hist. Soc. Papers, III, p. 295.

[2] In the record of sale of the Fort of Saybrook by Mr. Fenwick to the colony, which has been claimed as the basis of the jurisdiction right of Connecticut to the territory, occurs the following section: "The said George Fenwick doth also promise that all the lands from Narragansett River to the Fort of Sea-Brooke mentioned in a patent graunted by the earl of Warwicke to certain Nobles and Gentlemen, shall fall in under the Jurisdiction of Connecticut if it come into his power." This section, which seems to promise much, is in fact a much-broken link in the chain of so-called evidence, as it fails of connection at each end. As no patent granted to Warwick can be found, it is evident that he could not give a legal title to Lords Say and Sele and others, the nobles and gentlemen named above, of whom Fenwick was the agent. Again, notwithstanding Mr. Fenwick's agreement, no such conveyance was ever made, as Mr. Trumbull has clearly proved on documentary evidence.—Conn. Col. Records, I, Appendices III and XI.

no one of these various claimants could assert any legal title, other than that obtained by the enforcement of Indian contracts by force of arms. The smaller rights thus based on occupation or purchase were all that seriously concerned the practical colonists, and they pursued their way, generally all unconscious of an occasionally dark cloud which threatened to drive them from their hard-earned homes.

The story of settlement has thus far been concerned with individual enterprise, carried out either in the personal interest of trade, or in the interests of a larger body who assisted and encouraged it. All such movements are legitimate factors in the final issue, and the forerunners differ in no respect as settlers from those larger bodies with which they soon became fused, and in union with which they built up the future towns. Nearly all became proprietors and later inhabitants, and so are to be looked upon equally with the others as sharers in the honor of founding a commonwealth. Before the differences already mentioned had been permanently settled, and while the Dorchester emigrants were subduing the fields and forests of Windsor for habitation, in spite of the Plymouth land claims, word was returned to their townspeople left behind that the way was prepared. On the fifteenth of October there started from the Bay colony a body of sixty men, women and children, by land, with their cows, horses, and swine. Their household furniture and winter provisions had been sent by water, together with probably a few emigrants to whom the overland journey would have proved too tedious. The majority of these people were from Dorchester, but accompanying them were others from Newtown and Watertown, who joined their townspeople on the ground they were cultivating.[1] But they had chosen a

[1] There is considerable difference of opinion as to when Mr. Warham, the pastor of the church in Dorchester, of which most of these people were members, came to Connecticut. Dr. Stiles says in 1635 at the time of the above migration (Hist. of Windsor, p. 25). Rev. Mr. Tuttle says in the spring of 1636 (Mem. Hist. of Hart. County, II, p. 499), while Dr. B.

most unfortunate season. Hardly had they settled when all the ills of winter began to come upon them. The brave Puritan heart quaked before these ominous signs of approaching distress. Frosts, snow, insufficient shelter, scarcity of food, difficulty of caring for and preserving their cattle, and a consequent heavy mortality, were but few of the horrors of that winter of 1635–36. Many attempted a return. Six in an open pinnace suffered shipwreck, and after days of wandering reached Plymouth. Thirteen attempted the overland route. After ten days, twelve reached Dorchester, having lost one of their number through the ice, and the remainder only saved themselves from starving by the happy discovery of an Indian wigwam. The river was frozen over by November fifteenth, and snow was knee-deep in Boston. At length even sturdy Saxon blood could stand no more; death from cold and starvation was at hand, and the new-found homes were for the most part abandoned. Seventy men and women pushed their way southward to the river's mouth, to meet the Rebecca with their household goods and provisions on board; she was found frozen into the ice, unable to proceed farther upward. Fortunately a warm rain set her free, and all embarking

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Trumbull places it as late as September, 1636 (Hist. of Conn. p. 55). The evidence is so slight as to allow the holding of any one of these views. Under date of April 11, 1636, Winthrop says, "Mr. Mather and others of Dorchester, intending to begin a new church there (a great part of the old one being gone to Connecticut), desired the approbation of the other churches and the magistrates," but on a question of orthodoxy, "the magistrates thought them not meet to be the foundation of a church, and thereupon they were content to forbear to join until further consideration." In the next paragraph, Winthrop says, evidently referring to those mentioned above in parenthesis, "Those of Dorchester who had removed their cattle to Connecticut before winter, lost the greater part of them this winter." And again Winthrop says, under date August 23, 1636, "A new church was gathered at Dorchester, with approbation of magistrates and elders," etc., referring without doubt to the deferred meeting mentioned above. In view of this it seems unlikely that the Dorchester church would have remained all winter without a pastor, and that the gathering of a new church took shape at once on the departure of the pastor in the spring of 1636, some time before April 11.

returned to Massachusetts, arriving there on the tenth of December. Those who remained suffered the chastening which was to make them a great people. All were soon cut off from retreat by land or sea. Some perished by famine; the Windsor people lost nearly all their cattle, £2000 worth; and acorns, malt, and grains formed their chief sustenance. Yet this settling and jarring of a hard winter prepared a firm foundation for the structure that was soon to follow thereon. If the year 1633 marks the laying of the corner-stone, the year 1636 saw the completing of the foundation and the perfecting of the ground-plan for a stately commonwealth.

Connecticut Plantation.

The plantation had already, in the autumn of 1635, attained sufficient size to be the object of legal recognition, and a constable was temporarily appointed by the Massachusetts court. This local representative of the central authority seems to have been the only outward and visible sign employed in the admission to an equality in the sisterhood of towns of a sufficiently developed candidate. If Massachusetts, with her more artificial system of government, used any other method of recognition in addition to the act of the General Court, it is certain that the precedent set in the case of the first Connecticut plantations was ever after followed. But Massachusetts believed in preserving the law of continuity by reserving the power to her own magistrates of swearing in any constable chosen by Connecticut under the decree giving that plantation permission to make the choice for herself. It was the principle of constabular succession. But slowly there was evolving out of what had been, in the eyes of the Massachusetts court, one plantation of her people on Connecticut soil, three centers of settlement, and one constable was too small a quantity to suffer a tri-section of his powers. In March, 1636, the as yet uncentralized spirit of law and order began to take definite shape, in a provisional government provided by the General Court of Massachusetts. This government was com-

posed of eight prominent men, dwellers along the river, who were authorized to act as a court for investigation and decision, as a council for the issuance of necessary decrees, and as an administrative body for the carrying out of such decrees, either directly or indirectly, through the medium of the separate settlements. This court met eight times between the 26th of April, 1636, and the 1st of May, 1637. One of its earliest acts was to officially declare the tri-partite plantation, made so by the exigencies of its settlement and the triple origin of its people, to be composed of three towns, by the creation of three constables, one for each group of inhabitants. While we may say that this began the official system, it practically only declared the three settlements to be independent military centers, each with its cannon, its watch and individual train-band; and this is a very different thing from calling them towns fully equipped with all the paraphernalia of town government. The further duties of the court related to those matters which concerned the whole, with special reference to increasing the power for self-support and perfecting the bounds of the half-formed towns. By the terms of its commission, this government was to last but a year, and in the court which succeeded it the people found representation through committees, undoubtedly chosen at the request or order of the provisional government, or summoned because of the special emergency which demanded some action to be taken against the Pequots. The proceedings of the next four General Courts relate solely to that war.

The Outpouring.

The period of unicameral government was the time of greatest emigration, "the special going out of the children of Israel." Those whom the rigors of winter had terrified returned. With them were many others who had until this time been unable to arrange satisfactorily the disposal of their property and a settlement of other affairs before leaving. It is worthy of note that many of the Connecticut settlers

continued to hold lands in the Bay colony for some time after their withdrawal to Connecticut. At their head was Mr. Warham, the surviving pastor,[1] and this accession, perhaps occurring a few weeks before the formation of the provisional government, brought about its more speedy erection.

In June of this year a majority of the Newtown Church, under the leadership of Mr. Hooker and Mr. Stone, traveled under summer skies through the forests over highland and lowland for a fortnight before reaching their river home. They drove their flocks and herds, subsisted on the milk of their cows, bore their burdens on their backs, and thus their journey was an after-type of those earlier and greater southward and westward wanderings of their national grandparents in the older times. It was the bodily transportation of a living church. No reorganization took place. The unbroken life of the transplanted churches of Hartford and Windsor drew its nourishment from roots once set in Massachusetts soil. New churches took the place of the old, but an ancestry of five and six noble years belongs not to their history, but to the history of the Connecticut churches. With Wethersfield the case is different. The settlement was the work of individuals; a reorganization took place on Connecticut territory, and is recorded in the proceedings of the first court held under the provisional government. Thus, of the three river towns, Wethersfield was the most independent of all links connecting her with Massachusetts.

Lessening of Emigration.

Every effort was made by the home government at the Bay to check this flow of emigration, or, at least, to turn its current into more adjacent channels; but the bent of the emigrant's spirit was toward Connecticut, and for the time being the colonial government was helpless to prevent it. That their efforts were not confined to the large grants of land made to the Dorchester plantation and other legitimate means

[1] See note, p. 21.

of quieting the uneasiness, Hooker's letter to Governor Winthrop incisively shows.[1] He calls a series of misrepresentations by the Puritans at the Bay "the common trade that is driven amongst multitudes with you." The emigration grew less and less until 1638, and though large numbers came to Massachusetts that year, very few seem to have come to Connecticut. For this fact Mr. Hooker's remarkable statements are certainly a partial explanation. The Pequot war was not without its effect, but the Massachusetts men without doubt abused Connecticut. They raised pretexts for the effectual frightening of all who projected settlements there. Such settlers might—if they must go from the Bay—go anywhither, anywhere, choose any place or patent, provided they go not to Connecticut. The report was spread that all the cows were dead, that Hooker was weary of his station, that the upland would bear no corn, the meadows nothing but weeds; that the people were almost starved in consequence. Such reports, spread abroad in the streets, at the inns, on the ships before landing, and even in England before embarkation, are a little astounding. Even the Indians, wherever they got their notion, called them water-carriers, tankard-bearers, runagates whipped out of the Bay. As Hooker says, "Do these things argue brotherly love?" It would hardly appear so, and we must confess that in all their relations with their brethren and neighbors in the Connecticut valley, the Puritans showed little of that austere honorableness for which they are famed. Harsh necessity may have seemed to them an all-embracing excuse, but however that may have been, we must plead that even within the dark shadow of necessity, principles of fairness and equity should find a place.

As before intimated, by 1637 the tide of emigration had almost ceased. After-comers were not few, indeed, but the movements which gave birth to a new colony had practically reached an end. The coming of later settlers added no new

[1] Conn. Hist. Soc. Collections, vol. I, pp. 1–18.

features to the principles according to which the colony was projected.

Massachusetts and Connecticut.

From nearly every point of view, the civil, ecclesiastical and military life of the colony was far simpler and more natural than elsewhere on the American continent. It was the outcome of a second sifting from the complications of government in England. Its founders were twice purged, and in their revolt from the already purified government in Massachusetts, they evidenced how thoroughly democratic their principles must have been to have found themselves out of harmony with the latter's policy, that is, the policy of the central government; for the Massachusetts Puritans could not rid themselves of many of the associations in which they had been reared. Among them were men who looked longingly at the institutions of Old England and desired their reproduction. The equality of all was not to their taste, and they sought to establish a privileged class, to nullify the representation of the freemen by throwing all power into the hands of the assistants; they endeavored to create a life tenure for the governor, and to make the influence of the towns always subordinate to that of the colony, at whose head was a conservative aristocracy; state was linked to church, and the influence and direct interference of the clergy was great. It was an aristocracy, oligarchy, theocracy, but only in part a democracy.

Thus it was that the English settlements in Massachusetts failed to reproduce in many respects the conditions of a rational democracy. It was a compromise between the spirit of the past and the associations of the present. As a consequence, the dominant class and the commons, the central government and the towns, were continually at variance. This led inevitably to a split and the withdrawal of portions of their number into freer fields for an exercise of their Saxon heritage, the general power of all over general interests, and the

local power of each over local interests. This is self-government, severed from the influence of special class privilege, civil or ecclesiastical. It was the spirit of democracy given free development on a free soil.

The Connecticut central authority began, it is true, before the towns had fairly come into being, but it was a superimposed power, and when the colony erected its own General Court and established its own Constitution, it was found that the people held the check-reins.

To these people belonged the choice of magistrates, and the divine right of kings found no place, except as those in authority were chosen and upheld in office "according to the blessed will and law of God." In the people lay the foundation of authority, and therein a liberty which, as God-given, was to be seized and made use of. As those who have power can give and also justly take away, so the people could set bounds and limitations to the power of their magistrates, and of the places to which they had called them. No tenure for life, no papal infallibility there. Those in authority were weak creatures and liable to err, and as the burdens were heavy, so should censure and criticism give way before honor and respect. Popular election began at once on the assumption of its own government by the colony, and the committees to whom the people delegated their authority were no mere figureheads. They did not toy with government, electing the Assistants and then leaving to them all legislation, as in Massachusetts, but they formed a powerful lower house, which coöperated in the functions performed by the General Court. We may be sure this to have been so of a people who, in the Fundamental Articles, avowed their right, in case the Governor and Assistants refused or neglected to call the two General Courts established therein, of taking the control into their own hands: a House of Commons without King or House of Lords.[1]

[1] This privilege seems to have been but once exercised, and then under very different circumstances from those mentioned in the sixth funda-

The Sovereign People.

Yet these same people, in whom lay the sovereign power, gave up that power at the proper time into the hands of the General Court, without reservation. If between 1636 and 1639 the towns were independent republics, each sufficient unto itself, it was only so by virtue of a vivid imagination. It is dignifying with too sounding a title these collections of proprietors, who, busied about the division and cultivation of their lands, and with an as yet unformed system of self-government, looked to their magistrates and elected deputies in these three years for the ordering of those matters which concerned a sovereign state. But, from the date of the adoption of the Fundamental Articles, these towns lost what elements of legal independence they may have had before, and, by the free will of the people inhabiting them, became merely machines for the administration of local affairs, for the apportionment of representation and taxation, and for the carrying out of such powers as the General Court committed to them. They had no inherent or reserved rights. As far as the wording of the tenth section is concerned, complete power was given for the control of all that concerned the good of the commonwealth, with but one reservation to the whole body of freemen—the election of magistrates. The towns never had been sovereign; in fact, they did not become fairly organized towns much before the adoption of the Constitution, and it is not improbable that such adoption was delayed until the colony had become well established, in working order, and its people accommodated to their new environment. A sure foundation for the Constitution must have been laid before that document could be drafted and adopted with reason of success.

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mental. In 1654, on the death of Governor Haynes and the absence of Deputy Governor Hopkins in England, an assembly of freemen met in Hartford, to choose a Moderator of the General Court, who had power to call the next General Court for the election of a Governor and to preside over its meetings.—Col. Rec. I, p. 252.

Another most important evidence of Connecticut democracy must be noted and briefly dismissed. The suffrage of the Connecticut colony was unrestricted by ecclesiastical obligation. In Massachusetts and New Haven no one had a right to vote unless he was a freeman, no one could be admitted a freeman unless he was a church member; the church was congregational, wherein its affairs were managed by the votes of its members. Town and church were one. But in Connecticut, for the first twenty years, it was only necessary that each freeman have been admitted an inhabitant in the town where he lived, by vote of the majority of the inhabitants in town-meeting. Church and town were theoretically dissociated, though not practically for many years, and the government of Connecticut was, as near as possible in those days, by the people and for the people.

Note.—The Historic Town.—In nearly all the New England settlements the lay-out and organization of the towns were similar. Historically, this institution is purely English. Among the other Germanic nations the unit of constitutional machinery is the Hundred, corresponding to our county. The Celts and Slavs never developed local government by themselves, and the Romance peoples were governed, so to speak, from above, not from within. Yet, whatever may have been the constitutional development of the village community as acted upon by feudalism and the growth of centralized monarchy, there are certainly curious analogies to be found between certain phases of early New England town life and some of the oldest recorded customs, as seen in the extant laws of early German tribes. Many of these can be shown to have been retained in the English parish, and their presence can be explained by acknowledging a previous acquaintance on the part of the Puritan settlers. But, though other analogies, such as the laws against alienation of land, the spirit of town exclusiveness in the fullest sense, and the peculiarly individual and democratic nature of the town meeting, cannot be thus accounted for, they may be shown by the unbelievers in the Germanic origin to have arisen from reasons of economic necessity, and to be nothing more than interesting parallels. This would be the case with those who declare that the "town meeting is an outgrowth of New England life," and that "it had its origin with the first settlers." (S. A. Green, Records of Groton, Introd.) However, if the views of v. Maurer and Sir H. Maine are to be retained, who have pictured for us a system of Arcadian simplicity, a kind of Eden for the historical student, and we are to talk about

identities and survivals, then the purity of such a condition has been destroyed by the political development of those countries, which can trace back, with plenty of imagination when historical data are wanting, to this simple germ the thread of their history. For these germs, these peaceful congregations of our Aryan forefathers, were certainly destined never to be reproduced in the form given us by the scholarly exponents of the village community theory. There is more that is unidentical than there is that is identical. If we have been given correctly the original form, then it has suffered rough usage in its intercourse with the events of known history. The superstructure has had to undergo the changes which centuries of political modeling have brought about, so that wherever we find traces of the early village community life, they have to be dragged as it were from beneath a mass of irrelevant material necessary to the existence of a modern political unit. It is not strange that this political cell should never have been reconstructed in its entirety on the migration of peoples to England and later to America, for it is a much mooted point whether it had not largely lost its identity before Tacitus wrote about the Germans. It was fitted for only a primitive, half-civilized kind of life, where political craftiness was unknown, and the inter-relation of man with man and state with state still in very early infancy. But whatever form of local life, the village community, or the manor, or both, the Angles and Saxons carried to England, there is no doubt that within that form were embraced many of the foundation principles according to which the German *tun* is supposed to have been built; and that many of these customs, political, legal, social, agrarian and philological, were brought by the settlers to America, no reasonable scholar will pretend to deny.

II.

THE LAND SYSTEM.

Original Purchase.

The tribes of Indians which dwelt along the Connecticut river had little unity among themselves. They were scattered bands, and on the coming of the Pequots the slender ties which joined them were easily broken. So it was a natural result that the coming of the English, much encouraged by the Indians themselves, was made easy and their settlement on the Connecticut lands greatly assisted. We have seen that the adventurous forerunners were kindly received, and on one or two occasions owed their lives to the friendly shelter of an Indian wigwam; and during the destructive winter of 1635–6, the snow-bound settlers were kept alive by Indian gifts of "malt, acorns and grains." It was not an unusual thing in the colonial settlements for colonists and Indians to live peacefully side by side, pursuing agriculture or trade, or both. Of the early Connecticut adventurers, Holmes is the only one mentioned as purchasing land, and with him, as already shown, the circumstances were exceptional. Oldham and his companions undoubtedly made some bargain, probably of the nature of a joint occupation, and it is very likely that the same was true of the other early settlers before 1636, though one Phelps of Windsor appears to have obtained a deed of Indian land some time in 1635.[1] The indefinite nature of the transaction, and the later confirmation or repurchase of lands, would show that the Indians failed to comprehend the nature of what they were doing; and it may be that what the colonists understood as sale without any reserved rights, the Indian considered as a grant to the whites of the privilege of joint occupancy of the terri-

[1] Stiles, Hist. of Windsor, p. 105.

tory. For many years certain rights in wood and river were conceded to the Indians, and a kind of common law of this nature grew up in some quarters which would point to the recognition of the Indians as possessing some rights in their old possessions, which were sometimes expressly mentioned in their deeds, though they very soon faded away. The land was to the Indians worthless so long as they were in danger of losing it altogether, and the presence of the English meant protection. It was not sharp treatment, but a rough friendliness which led to the ready sale of the valley lands;[1] possibly a legitimate pressure was brought to bear in case of unwillingness, but more probably the unsettled state of affairs and the domination of the Pequots softened any savage obstinacy. As to moral title the colonists could have no better, and the question of original grant has here hardly a place; they purchased of the ancient and original natives, and not of the Pequots, as did the Dutch. It made no difference to the men who watched the Indian make his rude mark of transfer that the historian two hundred years later was to pick flaws in his right to purchase at all, though in English law there was no title until the confirmation of the lands by the charter. Every acre of Wethersfield, Hartford and Windsor territory was honestly obtained. There was no excess of generosity, and for colonists who struggled through hard winters and saw their cattle die by the hundred-pounds worth, there was no opportunity to be generous. But the faded old deeds in the land records, with their strange signature marks, testify at least to a hardy honesty of purpose.

The first to bargain for land had been the Dutch, who, in the name of the West India Company, purchased of the Pequot sachem land whereon they constructed their fort.

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[1] This note in the Windsor Land Records is suggestive: "Coggerynasset testifies that the land on the east side of the Great River, between Scantic and Namareck, was Nassacowen's, and Nassacowen was so taken in love with the coming of the English that he gave it to them for some small matter." Stiles, Windsor, p. 111–112.

The extent of the first purchase is doubtful. Later it consisted of about twenty-six acres, and was, in 1653, seized by the English, and the Dutch driven out forever.[1] After the Dutch bargain came that of Captain Holmes, who, for a valuable consideration, obtained possession of a large tract a few miles up the river, a large part of which was transferred to the Dorchester settlers in 1637. This tract was confirmed to the town of Windsor sixty-seven years later, for a parcel of trucking cloth. The first formal purchase of Hartford territory was made after the arrival of the Hookerites, when a deed was obtained for the whole of the old Hartford township, on the west side of the river. This was paid for by subscriptions to a common fund, and each received his proportion in the later division according to the amount put in. The same year the Wethersfield tract was purchased, perhaps by an oral agreement, and the immediate territory of the three towns became thus firmly established in the hands of the whites. Extensions were, however, obtained on both sides of the river until 1680. Private purchases were made with the consent of the court and town, and gifts from the Indian sachems always required the sanction of the town, in town meeting, where a vote was passed declaring that the grantees and their heirs could enjoy such lands forever. In 1663, however, the court forbade any negotiation with the Indians for land, except it be for the use of the colony or for the benefit of some town.

The law of supply and demand regulated the nature of the exchange. The Indians had at their disposal meadows and hillsides, trees, woods, brooks and rivers, while the colonists had money and goods. The purchase money took the form of so many pounds sterling, so many fathoms of wampum, so many yards of trucking or trading cloth, so many pairs of shoes. There does not appear in Connecticut that variety found in New Haven and elsewhere. Clothing was in great

[1] Hart. Book of Distrib., pp. 133, 550; Stuart, Hartford in the Olden Time, ch. 24.

demand, and twenty cloth coats are recorded for payment of lands across the river, together with fifteen fathoms of wampum.[1] Small parcels of land were obtained in Windsor in return for fines paid in rescuing unfortunate aborigines from the Hartford lock-up[2] and for other services rendered. It is likely that wampum, which was legal tender in New England from 1627 to 1661, was often the medium of exchange; money or wampum was more available than coats, for it was divisible. Twenty coats could cover twenty men, but not women and children; but so many fathoms of shell-cylinders, deftly pierced and strung on animal tendons, could be divided among the family group or a number of grantors. The boundaries of these purchases were generally undetermined and their extent loosely expressed. Oftentimes natural boundaries were such that the location of the purchase can be approximately fixed. These were stated as lying north and south between fixed points on the river, and as running so many miles inland. Such a description would allow of accurate measurement, but when the distance inland was "one day's walk," there might be a difference of opinion as to who should be the surveyor. Often in case of small sales the tract is described as of so many acres adjoining certain bounds or swamps, or other well-known and fixed localities. It was the hazy outlines of the Indian purchases which gave so much trouble to town and colony in the after-settlement of township bounds. In both Hartford and Windsor there were Indian reservations[3] and villages within which the natives were obliged to live, but they proved rather troublesome neighbors, and there was a constant friction between

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[1] Stiles, Windsor, pp. 110–111.

[2] Ib. p. 108. This was not an uncommon occurrence; the circumstances attending the purchase of Massaco (Simsbury) were similar (Mem. Hist. II, pp. 341–2), and the red brethren were bought out of the New Haven jail in like fashion (Levermore, Republic of New Haven, p. 173).

[3] Wind. Rec., Dec. 10, 1654; Hart. Rec., Mar. 15, 1654; June 15, 1658.

the court and the Indians until their final disappearance. The lands of the reservations came, before 1660, into the possession in Hartford of the town, and in Windsor of a private individual. This reservation of land was a prototype of our national Indian policy, and was employed in many of the colonies.

Grants by the General Court.

Before 1639, each set of proprietors by itself purchased land of the Indians, and agreed on the boundaries between the plantations through their representatives. But after 1639, all unoccupied territory became public domain and was subject to the control of the colony. This power was granted in the Fundamental Articles, where the people gave to the General Court the right "to dispose of lands undisposed of to several towns or persons." After this, the growing towns had to apply to the central authority for power to extend their boundaries. Thus it happened in 1640 that the towns petitioned the General Court for an increase of territory, and a committee was appointed for examining certain lands suitable for this purpose.[1] The court had already taken measures toward the maintenance of their rights by recent conquest of the Pequot territory, which, by the treaty of 1638, came into their possession.[2]

The central authority was by no means prodigal with its lands, nor yet were they given grudgingly. It was recognized as a far better condition that the lands be in the hands of enterprising men or communities undergoing improvement than that they remain untilled. But though grants were not made at hap-hazard, yet the colony managed to dispose of about thirteen thousand acres within the first thirty years, in amounts varying from forty to fifteen hundred acres. Careful discrimination was made as to the nature of the lands given, and many a grant was specially stated to

[1] Col. Rec. I, p. 42.

[2] Col. Rec. I, p. 32.

contain only a certain proportion of meadow, usually one-sixth or one-eighth, and at times no upland was allowed to be taken. The islands at the disposal of the court were first given out, and divisions of the Pequot country followed. It was expected that the grantees would at once or within an allotted time undertake the improvement of their grant, either by cultivation or by the establishment of some industry. Neglect to do so generally called forth a reprimand.

Grants made gratuitously were to the leading men of the colony, although they did not at times hesitate to send in petitions. The latter was in general the more common method, and the petition was based on service rendered to the colony, either in a civil or military capacity. It is not always easy to assign causes for grants, but it is safe to say that where no cause is assigned the grantee will be found to be of some prominence in the colony. The pensioning of soldiers who fought in the Pequot war was by means of land grants. After giving out to these soldiers about fifteen hundred acres, an order was passed in 1671 to the effect that, "being often moved for grants of land by those who were Pequitt soldiers, [the court] doe now see cause to resolve that the next court they will finish the matter and afterwards give no further audience to such motions,"[1] after which summary disposal of pension claims, about a thousand acres more were granted and the matter finished.[2] Land grants were required to be so taken up as not to injure any plantation or previous grant; as

[1] Col. Rec. II, p. 150.

[2] This prototype of our modern pension claims is full of interest. Not only did the colony reward its soldiers for honest service, but the towns did also. The Soldier's Field mentioned in the Hartford Records was so called because therein the Hartford soldiers who fought in the Pequot war received grants. (See paper by F. H. Parker on "The Soldier's Field," in Supplement to Hartford *Weekly Courant*, June 18, 1887.) Windsor also gave a large plot of land to each of her soldiers serving in this war. (Stiles, Windsor, p. 41; see also p. 201 for petition for land after King Philip's war.) Norwalk rewarded her soldiers who fought against King Philip after this manner; to those who served in the "direful swamp fight" of 1676 were

one entry puts it, "provided it doe not damnify the Indian nor the plantation of New London nor any farm now laid out."[1] Sites which appeared suitable for new settlements were reserved for that special purpose.

In Connecticut it was more frequently the rule that no definite location was assigned. The grantee might take his land wherever he could find it, or, in case of equally favored localities, he could choose that which he preferred, always under the conditions already named. In this particular there was far greater freedom than in Massachusetts. As the colony was not always sure of the extent of its territory—for its boundaries at this time were very unsettled—there was occasionally added in a grant, "so far as it is within their power to make the aforesaid grant,"[2] and in another, "where he can find it within Connecticut liberties."[3] A committee was generally appointed to lay out the grant, which, when made to a particular person, must be taken up in one piece, "in a comely form,"[4] unless it was otherwise provided by special

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given twelve acres within the town bounds; to those who served "in the next considerable service," eight acres, and to those "in the next considerable service," four acres (Hall's Norwalk, p. 63). Saybrook also voted that "The soldiers that went out of town in the Indian war shall have five acres apiece of land." (Saybrook Records, 1678.) Following the system inaugurated by town and colony, the Continental Congress in 1776 passed the following resolution: "That Congress make provision for granting lands, in the following proportions: to the officers and soldiers who shall engage in the service and continue therein to the close of the war or until discharged by Congress, and to the representatives of such officers and soldiers as shall be slain by the enemy." The proportions were as follows: Colonel, 500 acres; lieutenant-colonel, 450 acres; major, 400 acres; captain, 300 acres; lieutenant, 200 acres; ensign, 150 acres; each non-commissioned officer and soldier, 100 acres. In 1787, for the satisfying of claims based on this resolution, Congress set apart a million acres of land in Ohio and another large tract covering the southern portion of Illinois, bounded by the Ohio, Mississippi, Kankaskia, Little Wabash and Wabash rivers. (Journals of Congress, I, p. 476; IV, p. 801.)

[1] Col. Rec. I, p. 340.

[2] Col. Rec. I, p. 282.

[3] Col. Rec. I, p. 372.

[4] Col. Rec. II, p. 200.

permission of the court. The committee was usually paid by the grantee. In case a grant conflicted with the lands of a township, the right of the township was always maintained and the granted land was laid out in some other quarter.[1] In two cases lands within town boundaries were granted by the General Court, though these are evidently irregular and isolated instances.[2] Industries were fostered and land was granted by the colony, as was also done by the towns, for their encouragement. John Winthrop was subsidized for his saw-mill and his fishery at Fisher's Island, and John Griffen for making tar and pitch.[3]

The General Court took care to see that not only the individual grants were accurately bounded, but that each township should be distinctly separated from its neighboring townships. Of course in the early days there were a number of isolated plantations, yet in these cases the length of the boundary line was fixed in miles. The extension of the boundary lines of a plantation was equivalent to a grant of land to that community, and was very frequently, in fact one may safely say invariably, made for the first fifty years. In 1673 the boundaries of Wethersfield, Hartford and Windsor were extended five miles eastward on the east side of the river, "for the encouragement of the people to plant there,"[4] and in 1671 the bounds of Windsor were extended two miles northward.[5] A few years after, eight inhabitants of Wethersfield petitioned the court for a town grant of ten square miles, with the usual privileges and encouragements, for the purpose of erecting a plantation.[6] This method was not so common in

[1] Col. Rec. I, pp. 208, 221, 230.

[2] Col. Rec. I, pp. 68, 393. In the latter case the grantee paid for the land to the court.

[3] Col. Rec. I, pp. 64–5, 410. There is a collection of legislative acts for the encouragement of Connecticut industries in the Report of the Bureau of Labor Statistics for 1887, pp. 47 ff.

[4] Col. Rec. II, pp. 185, 187.

[5] Col. Rec. II, p. 155.

[6] Col. Rec. III, 99.

Connecticut as in Massachusetts, where by far the greater part of the land disposed of was granted to communities of settlers.[1] The rule was early made[2] in Connecticut, as also in the other colonies, that neither town nor individual should purchase from the Indians without the sanction of the court; this was enforced[3] both for the protection of the Indians and for the maintenance of the dignity of the court.

In 1666, counties were established, and four years afterwards the General Court gave to each six hundred acres for the support of a grammar school,[4] although the school-teacher himself does not appear to have been assisted as was the case in Massachusetts.[5] By 1674 the colony probably felt that she had rewarded her servants, provided for her towns and schools, and might, herself, reap some benefits from her lands, for we find in that year a committee appointed to examine and dispose of certain public tracts at the best price;[6] this did not mean, however, a cessation of private grants from the public domain.

A word must be said regarding the patent which was given to each town in 1686 for the better securing of its lands. This was at the time of the Andros government. Not only were the lands actually occupied by the towns included in the patent, but also large tracts of public lands within the jurisdiction of Connecticut, to prevent their falling into the hands of Andros. These were granted in free and common socage.[7] To Wethersfield, Middletown, and Farmington a large tract in their immediate vicinity was given, and they were enjoined to erect thereon plantations.[8] To Hartford and Windsor was

[1] Egleston, Land System of N. E. Colonies, J. H. U. Studies, IV, p. 571.
[2] Before 1650, Col. Rec. I, pp. 214, 402.
[3] Col. Rec. I, pp. 418, 420.
[4] Col. Rec. II, p. 176.
[5] Mass. Col. Rec. I, p. 262.
[6] Col. Rec. II, p. 231.
[7] "Not in capite nor by knight service." This is a curious retention of a formula, for feudal tenures were abolished in England in 1661.
[8] Col. Rec. III, p. 225.

given nearly the whole of the present Litchfield County. In the latter case, after the downfall of the Andros rule, the colony tried to recover the tract of patented land, but the towns clung firmly to what they claimed as their rights, and in 1715 took measures for the proper disposal of the land and the laying out of one or two towns therein. These towns claimed the right contained in the grant of the General Court to give full and ample title to any purchaser,[1] and had two years before taken possession of this tract in good old Teutonic fashion by turf and twig.[2] They now appointed a committee to act as real estate agents for the town. A compromise was afterwards effected. The tract in which they hoped in 1715 to lay out two or three towns now contains nearly twenty-five.

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[1] Col. Rec. III, p. 177–8; Hart. Town Rec., March 3, 1714–15.

[2] Wind. Rec., Dec. 23, 1713. This method of taking possession was formally required by English law. Its origin antedates the use of written documents; a twig broken or a sod cut symbolized the transfer. The later written deed simply took the place of the living witnesses required by the old form; the ceremony continued until a late date. Two quotations will suffice. "Voted that two of said committee shall go and enter upon said propriety and take possession thereof by Turf and Twigg, fence and enclose a piece of the same, break up and sow grain thereon within the enclosure, and that they do said service in right of all the proprietors, and take witness of their doings in writing, under the witness hands." (East Hart. Rec., Goodwin's East Hartford, p. 150.) The second quotation illustrates the transfer of land. Two inhabitants on deposition testify, "as we were going from Hartford to Wethersfield, Jeremy Adams overtook us and desired that we would step aside and take notice of his giving possession of a parcell of land to Zachary Sandford, which we did, and it was a parcell of land . . . on the road that goeth to Wethersfield, and we did see Jeremy Adams deliver by Turf and Twigg all the right, title and interest that he hath or ever hath of the whole parcell of land to Zachary Sandford." (Hart. Book of Distrib., p. 399.) See also Col. Rec. III, 305. The same custom was in use in other colonies. H. B. Adams, Village Communities of Cape Ann and Salem, J. H. U. Studies, I, p. 398. Bozman, Maryland, II, p. 372, note. "Gleaner's" Articles, Boston, Rec. Comm., vol. V, p. 117.

Early Town Allotments.

The system of land allotments was not essentially different from that which was in vogue in the Massachusetts towns. The nature of the settlement was different, and in consequence there was probably less order and symmetry in the apportionments. One can almost trace out the story of the settlement from the nomenclature of the Town Votes and Land Records. Wethersfield has her "adventure lands" and her town originally of two distinct parts, with the meeting house square between, betokening an earlier and latter infusion of settlers. Hartford has recorded the "Indian's land," "Dutch Point," and "Venturer's Field" as existing before the coming of Hooker, and Windsor has references to "Plymouth Meadow," and to the "Servants" (Stiles party) who preceded the Dorchester emigrants. The lands seized by these early comers were in advantageous positions, and their occupation was recognized as entailing a legal right to the lands.

The adventure lands of Wethersfield[1] form one of the most fruitful plateaus in the present township; a triangular-shaped plain of splendid arable, out of reach of freshets and capable of high cultivation. This plain was closed in on each side by the Wet Swamp and Beaver Brook, which water-drugged courses gradually drawing closer together met at what was called the "Damms," a division of land half spur and half swampy meadow caused by the artificial damming of the stream by the beavers. Parcels of ten, twenty and seventy acres are found in the Records, adjoining each other on this plateau, and forming the largest open tract in the immediate eastern vicinity of the lower part of the town. As other settlers appeared, they occupied lands taken up somewhat in the order of their arrival. The home-lots were divided originally into two communities, the earlier of whom settled on

[1] The writer has made a detailed study of the system of early allotments of one town, Wethersfield, as can only be learned from her book of Land Records.

lands adjoining those of the Adventurers, the other farther to the north took advantage of the neighboring water facilities and the convenience of the harbor. The home-lots were of nearly the same size in the majority of cases, about three acres, nowhere less than two, and only exceptionally six, ten, thirteen, and eighteen.[1] It is likely that in the larger homesteads a sale had taken place, not recorded, and the accumulation of property thus early begun. Uniformity is the rule, and shows that whether in a general meeting of the proprietors or otherwise, a certain system was agreed upon. The lay of the village streets marks the double settlement, although the two parties at once united in the division of lands. The system of the New England colonies shows unmistakable traces of the influence of the mother country, yet only in its general bearings and principle of commonage does it have any direct resemblance to the early English or early German tenure. In its direct apportionment of small shares of all kinds of land to each inhabitant, to his heirs and assigns forever, the system is *sui generis*, though in its more general aspect of arable, common and waste land it is similar to the older form. Every New England village divided the lands adjacent to the town, the arable and meadow, into large fields, according to their location and value, and then slowly as there was need subdivided these fields in severalty to the proprietors, according to some basis of allotment. Means of access, or "ways," were cut into or through the fields, answering to the headlands in the Saxon arable, and these, with the more dignified but not necessarily more passable "highways," formed sufficient boundaries to and division lines between the different parts of the meadow. Apparently every new-comer who became an inhabitant either

[1] In Watertown, whence so many of the settlers came, the recorded home-lots varied in size from one acre to sixteen, with an average of five or six acres. (Bond, Watertown, p. 1021.) Yet one is not sure that this represents the original allotment, for in Hadley, settled partly from Wethersfield in 1659, the size of every home-lot was eight acres, and church members and freemen had no advantage over others in the distribution of lands, a fact which was almost universally true. (Judd's Hadley, p. 33.)

purchased or was given a share in the lands of the town; not, indeed, a lot in every field, for the old fields would soon be filled up, but in the new fields, which, opened or "wayed" off in advance, were a ready source of supply. Certain sets of men held their lands almost exclusively in certain fields, having no part in the division of other inferior fields, which appear to have been assigned to late comers, who evidently came to the settlement in parties of three or four or a dozen at a time. Human nature is much the same the world over, and there are clear traces of an ancient and honorable class, even in the infant community. They held the best lands and had the largest shares undoubtedly because they contributed the largest part of the purchase money. So far as practicable, lands were held in the neighborhood of the home-lot, from obvious reasons. This is chiefly true of early comers, though by no means a fixed rule. Besides the artificial bounding of the large fields by "ways," natural boundaries, as river and mountain, were largely employed, and the names given to these fields at once disclose their location or some superficial or other characteristic.[1] The individual plats are simply described as bounded by highway or river, meadow, fence or water-course, and by the adjoining lot of a neighbor. The shape of the lots was generally that of a parallelogram, though here again no certain rule obtained. We find the "Triangle," "Jacob's Ladder," and a variety of other geometric forms, but the rectangle is the custom. In a number of the fields laid out[2] we notice a certain regularity which betokens design. The field was divided into two parts

[1] The following are some of the Wethersfield names: Great Meadow, Wet Swamp, Dry Swamp, Long Row in Dry Swamp, Great Plain, Little Plain, East Field, Middle Field, West Field, Little West Field, Great West Field, Furtherest West Field, South Fields, Beaver Meadow, The Dams, Back Lots, Pennywise, Mile Meadow, The Island, Hog Meadow, Huckleberry Hill, Ferne Hill, Fearful Swamp, Hang Dog Swamp, Sleepy Meadow, Cow Plain.

[2] South Fields, Fields in Mile Meadow, The Island, and Middle Row in Dry Swamp.

lengthwise, and the order of holders in one tier would be reversed in the other, thus making the distribution more equal. Often clusters of the same holders are found, two or three together, holding the same relative position to each other in different fields, which seems to show that these must have received their allotments at about the same time, each taking holdings in several adjacent fields. In two[1] of the large divisions a curious arrangement prevailed. Each field was a parallelogram divided crosswise into sections. The holder of the first section next the highway on the east also held the last section, of exactly the same size, next the wilderness on the west. Section-holder number two from the highway owned also the second section from the wilderness, and so on, each holder having two lots in this tier, symmetrically placed and of equal size, the holder of the middle section of course owning one large lot, because his two sections would lie adjoining each other. The system of tiers or ranges in formal divisions was universally employed in Massachusetts and Connecticut, but finds no analogy on the other side of the water, although the method of assigning these lots by chance, in the drawing of numbers or some similar procedure, is as old as the cultivation of the arable itself. In these early allotments the Church comes in for its share. In fact, it was a fixed principle in the working out of the land system to consider the Church as a very important personage, and assign to it lands accordingly. Its portions were considerably larger than the average, and were scattered about in nearly every one of the large fields. These allotments are generally titled "Church lands," "Church lotts," or at the "Churches dispose." Such lands were not taxable, and many of them were held until a late day, not being alienable. The terms of the grant of church or parsonage land are ironclad: "to remain and continue to the use of the ministry, by way of a parsonage, forever,"[2] or other conditions similarly

[1] Little and Furtherest West Field.
[2] Weth. Town Rec., March 23, 1666.

binding. But Yankee ingenuity has effected a lease of many of these lands for 999 years, thus obviating a difficulty, though any improvements made upon them changing their condition as church property were, by decision of the court, taxable.

As might have been expected, a great deal of the land was "ungiven" in the year 1640, even within the fields already described. Amongst the homesteads also we find plots reserved by the town as house lots, and the lands ungiven within the more distant fields must have been of considerable amount. Some of the older fields do not appear to have been entirely divided up for forty years.[1] The divided fields were bounded by the ungiven lands, lands not laid out, and the wilderness.

In the mind of the court, the land rights of the three towns must have become by 1639 somewhat confused, for in that year it ordered each town to provide for the recording of every man's house and land, already granted and measured out to him, with the bounds and quantity of the same.[2] As a result of this order, there exist those valuable books of distribution, upon whose records all maps of the river towns are based. In consequence of the fact that four years elapsed before record was made, the standard of apportionment can only be approximately determined. The business activity of the little colony in real estate must have been great during this period. There were numerous withdrawals from and occasional accessions to the number of inhabitants, which would occasion a considerable distortion of any original system. It is safe to say that to each homestead there belonged proportional rights in the upland,[3] and in some cases

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[1] Allotments were assigned in Mile Meadow as late as 1680; in Great Meadow, 1680; in Dry Swamp, 1654; Wet Swamp, 1673.

[2] Col. Rec. I, p. 37. Massachusetts in 1637 had the same trouble, "That some course be taken to cause men to record their lands, or to fine them for their neglect." Mass. Col. Rec. I, 201.

[3] Col. Rec. I, p. 63.

the possession of a home-lot carried with it rights in every division.[1]

By 1640 many of these rights had been sold to men within the colony, and because many of the divisions were already full we find different sets of owners in the different fields. There are certain traces remaining of a proportion between certain of the house lots and the meadow lots. Ratios of two to one, three to one, are visible. In the apportioning of the large fields there is more evidence of design, because consummated at a later period, and thus subject to fewer transfers or sales. Between the lots in the Meadow, Great West Field, and Naubuc Farms we note such proportions as 14–42–84, 13–39–78, 17–51–102, 19–57–195, 16–48–144, 45–135; but we also find as many exceptions to the rule which the above evidence might seem to offer, as there are conformities to it. In which cases we can say that there has been a deviation from an original rule through property accumulation. The fact that in all later apportionments some basis of division was regularly employed, points to a similar custom before 1640. It is possible to draw the conclusion based on slender, yet suggestive facts, that allotments in the homesteads were made as nearly equal as possible, only varying in size because of adventitious causes, such as size of family, wealth, position, influence, etc.; that allotments in the Great Meadow were based on the right of each in the purchase land according to his contribution; that in the Great West Field there was employed a three-fold allotment based on the former division; and in the Naubuc Farms division, there was used a two-fold allotment based on the Great West Field.[2]

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[1] Col. Rec. I, p. 445. "Rachel Brundish hath 14 acres of meadow, her house lott 3 acres, and what upland belongs thereunto in every divysion, saveing what her husband and she hath sold, vizt. her shaire beyond the River and 6 acres in Pennywise."

[2] See below, p. 55, n. 2.

Individual Grants.

Many of the grants already described were individual, but of a somewhat different nature from those of which we have mention in the Town Votes. Before 1640 the town was supplying itself with land, after 1640 it began to supply newcomers. In order to properly understand the situation we must know something about that town oligarchy, the proprietors. They were the body of men who owned the land, who had a dual character as proprietors and as inhabitants; this is recognized in the phrase frequent in the records, proprietors-inhabitants. Herein the three towns present decided differences. In Hartford, while many grants were made by the town in town meeting, yet much was done in proprietors' meeting, and general divisions in but one or two cases were made there also. In Windsor, on the other hand, no grants were made in town meeting except for encouragement of trade, and then such lands were given from the distinctly town lands, as town commons, town farm, town orchard; all was apparently done by the proprietors. But in Wethersfield the town and proprietors were practically one, and all grants, as well as all general divisions, were made in town meeting. The latter case is then specially worthy of examination. The earliest division of lands was between thirty-four men, who claimed, as the number of inhabitants increased, their original right. In 1640, after the order of the General Court giving towns power to dispose of their own lands, and before the recording of lands was completed, an agreement was made between these thirty-four men and the Town and Church, by which they were given an equal share in the lands to be divided, whether to be held as common land or in severalty.[1] This may have given to the Wethersfield system of grants its peculiarly town character. The proprietors' right to the ungiven lands was generally held in abeyance, and practically the town held the privilege of granting lands

[1] Col. Rec. I, p. 63.

at her pleasure. Two facts are, however, to be noticed; first, that the proprietors or their descendants held—when they cared to exercise it—the balance of power in town meeting; and second, that in case of mismanagement, the proprietors exercised their right and it was recognized by the town. Yet in the granting of single lots to new-comers, the proprietors allowed them to be given by the town in the name of the town in town meeting.

For many years after the early allotments no general apportionment of lands was made except in the shape of single grants by the town to private individuals, according to phrases in the records, "which was given by the Church and Town," "which was given him by the Church," "which was given him by the Town."[1] The grant was either gratuitous or by request, more frequently the former. Often the amount is not stated in the vote, and when given, rarely exceeded twenty acres. House lots were given as well,[2] and in the case of gratuitous grants, the desire of the receiver must have been in some way expressed, personally or through his neighbors. The town as well as the State encouraged industries and looked out carefully for all undertakings which promised benefit or advancement. To any one of good character and acceptable to the town, land was granted in very liberal quantities and with considerable liberty in the selection. The grant was almost invariably accompanied by conditions, as in the case of a grant to Governor Winthrop for a mill; "if the said hon^{r} Gov^{r} Winthrop doe build mill or mills according to his proposition made to the town, that then this grant to be confirmed and settled upon the said Winthrop and his heirs forever, or else to be void and of none effect."[3] Governor Winthrop failed to comply

[1] Weth. Rec., Dec. 28, 1649; Jan. 25, 1652, and Land Records, vol. I, *passim*, under date 1640–41.

[2] House lots were often taken directly out of the highway when the width allowed.

[3] Weth. Rec., June 3, 1661.

with the condition, forfeited the land, and it was regranted six years later.[1] But grants for the support of industries (and these and grants for recompense are the only ones found in the Windsor Town Records) were not alone subject to conditions. The principle that granted lands must be improved or built upon was adopted by Hartford as early as 1635, when twelve months was made the limit, the town at the same time reserving the right of necessary highway through any man's land.[2] This rule was relaxed in favor of prominent individuals, sometimes by an extension of the time limit, and sometimes by an entire freedom from the condition.[3] In case of forfeit, the grantee was generally paid the full value of expended labor. As it was a bad policy to observe too tenaciously conditions which would discourage inhabitancy, the town seems to have enforced the forfeiture and then to have avoided bad results by a technical subterfuge; the same piece of land was regranted, or a new lot was given in another quarter.[4]

Another condition provided for in the case of freed servants or repentant sinners was the voiding of the grant in case of sale or alienation. This was to prevent imposition in case of doubtful characters, whose efforts toward uprightness the town wished to encourage. A kind of police regulation is embraced in one condition, best explained by quotation. Thirty acres were given to John Stedman on the town frontier next the common, "on the considerations following, viz. that the said Sjt. John Stedman shall secure, preserve, and defend the timber, fire-wood, and stone belonging to this town from all intruders thereon, especially from the inhabitants of Hartford, . . . and on his failing of the considerations mentioned, he is to

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[1] Weth. Rec., Nov. 4, 1667.

[2] Hart. Rec. 1635, I, p. 11.

[3] Hart. Rec., Jan. 14, 1639.

[4] "Mr. Alcott's house lot being forfeited is taken into the town's hands until the next general meeting, who will either let him have that again or give him answer in some other kind." Hart. Rec., Jan. 10, 1639, I, p. 115.

forfeit his said grant."[1] Indeed, conditions were by 1650 such a matter of course, that one vote, covering some half a dozen grants, made them all conditionary in one breath. "All these men had their lands given them by the town upon the same conditions, which men had and was formerly tied to and bound to."[2] Failure to carry out these conditions, as already said, rendered the grant void, and the land reverted to the town. Often, instead of a distinct allotment of new land, the grant took the shape of an enlargement or extension of land already owned. Here no condition was required, as the grantee was already well known and his reputation established. Two other varieties of land allowance need to be mentioned, which would not increase the number of holdings in severalty, as would be the case with those already discussed—the grant of an equivalent elsewhere when land of an inhabitant was taken for street or highway,[3] or unintentional injury had been made by a later grant; and the giving of a portion to some needy person, generally of only an acre or two, to improve for a short time rent free, on condition that the fence be maintained.[4] Rent, when charged, was small—ten shillings per acre.[5] The laying out of all the above grants was done by the townsmen or a committee selected for the purpose, and it was not infrequent that questions of amount and location were left entirely to the discretion of the committee.[6]

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[1] Weth. Rec., January 3, 1686. There is something curiously similar in this instance to the position of the lands of the Saxon *haward*, who was given his lands along the border of the manor, so that, in case of damage by loose animals, his own lands would first suffer. The town fathers evidently appreciated the fact that Sjt. Stedman, holding land where he did, would keep a more careful lookout.

[2] Weth. Rec., Dec. 28, 1649.

[3] Hart. Rec., Jan. 6, 1651.

[4] Hart. Rec., Feb. 3, 1668.

[5] Wind. Rec., Feb. 4, 1684.

[6] The granting of a lot was, of course, confined to inhabitants who were new-comers, and who are to be distinguished from the proprietors. Hartford has a list of "the names of inhabitance as were granted lotts to

Although from the absence of record we have said that the later Windsor grants were made by the proprietors, yet we know that the earliest allotments were made by the "Plantation."[1] The Hartford proprietors were an important body, but were satisfied to let the town shoulder the burden of making individual grants, while they kept in their own hands general divisions. The Wethersfield proprietors were dormant, not dead.[2] Their meetings were fused with those of the town, and troubles arose frequently between the established few who paid the greater part of the taxes, and the new-comers or less important inhabitants.[3] The former asserted their previous rights in the

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have only at the Townes Courtesie, with liberty to fetch wood and keep swine or cows by proportion on the common." (Book of Distr., p. 550.) The privileges of granted lands were generally confined to the owner. Hartford early passed a vote denying the privilege of felling trees on granted land to any except the owner. (Hart. Rec., Dec. 23, 1639.) In Windsor all granted lands were considered free for the inhabitants to use for the obtaining of wood, timber and stones until they were enclosed. (Wind. Rec., Feb. 4, 1684.) An act like this was intended to offset the monopoly of the proprietors, and to hasten occupation and cultivation. Two years after Windsor extended the privilege of every inhabitant for the obtaining of timber, stone, wood, and grass to all unenclosed and undivided lands. (Wind. Rec., Jan. 5, 1686.) On this point, however, see the section Proprietor's Commons.

[1] Wind. Land Rec., vol. I, *passim*.

[2] That the proprietors still lived is evidenced from this vote: "That no land shall be given away to any person by the Town, unless there be legall notice given to all the proprietors before the meeting that is intended by the Selectmen to give away land aforesaid." (Weth. Rec., March 18, 1678–79.) The same factors existed in each of the towns, only differing in the ratio of influence in town affairs. In Wethersfield the town overshadowed the proprietors; in Windsor the proprietors overshadowed the town, while in Hartford the balance was about equally preserved.

[3] Much the same state of things existed among the proprietors of Windsor. There were the historic proprietors who had primordial and inherited rights, and the new class who had purchased rights and held their position by virtue of their money. This led to constant disagreements and factional disputes. The cause of this lack of harmony was the question whether a majority vote was to be decided by counting the number of hands held up, or by reckoning the sum total value of rights thereby represented.

undivided lands, and protested against the indiscriminate giving away of common land, particularly that which lay in the stated commons, streets, and highways, by these less conspicuous taxpayers. The latter, apparently taking advantage of an apathy toward the town meeting, and consequent absence of many of the proprietors, gave away to persons undeserving of the same, the lands belonging, as the protestants claimed, to the proprietors and inhabitants in general. Not only was this very caustic protest entered in the records, but a special vote was passed providing for the proper stirring up of sleepy farmers when town meeting was to be held.[1] The fact of this protest shows that among the townspeople themselves, all undivided lands were considered as belonging to the town, not in its corporate capacity, but as composed of the proprietors and inhabitants of that town, and that indiscriminate alienation of any portions of these lands was a direct infringement on the rights of such inhabitants and proprietors.

The liberal policy pursued by town and proprietor was not sufficient to exhaust all the land in the immediate vicinity. None of the smaller parcels granted were far from the towns, except a few, which formed the partial basis of new villages[2] three or four miles away, often across the river. Therefore a more rapid process was in a few cases effected, and a system of dividing up vacant tracts established. Such tracts were not large, and the number of men interested therein was limited. The principle contained in the gift of such lands was akin to that of the individual grants, while the method of division bore a resemblance to that most prominently employed in the larger divisions. The grantees were always inhabitants already holding land in the township, and the existence of an amount of ungiven land, upland or meadow, favorably situated, would lead to a petition by divers inhabitants for the

[1] Weth. Rec., Jan. 28, 1697–98.

[2] In this sense were the words town and village used in the Connecticut colony. The town was a political unit, the village was not.

parcelling of it out to them. This petition would be acted upon in town meeting, and a committee appointed to interview the petitioners and fix the basis of allotment. The proportion was usually that which existed already in some divided field or former grant. In one of the earliest instances, seven petitioners were given three acres, and an eighth was made residuary legatee.[1] In another, six inhabitants received all the undivided land in Wet Swamp, and with it the care of what remained unassigned of the common fence.[2] Two years later a large tract of upland was divided in fourfold amounts to those holding allotments in Mile Meadow. The records fail to state the number of partakers, or whether it was done by request or otherwise.[3] In Hartford such a division took place when the land lying in the rear of five home-lots and extending to the river was divided to the owners of these lots, according to the number of acres each had therein.[4]

One interesting case of division is found where the land is allotted according to proportion of meadow fence. This fence was, by order of the town, removed from the lowlands, extended along the top of the hill, and again turned at right angles toward the river. A large grant was made to those removing their fence, and it was proportioned in the following manner: the land was divided by a path into two fields, one 126 rods wide and the other 31 rods wide. To every man there was given in the larger tract one rod's width of land for every three rods which he owned of fence, and in the smaller tract for every eight rods of fence was allotted half a rod's width of land. The allotments therefore ran in narrow strips east and west.[5] This division took place in one of the outlying settlements which afterwards developed into a separate town. Toward the close of the century we begin to find steady encroachment on the generous widths allowed for

[1] Weth. Rec., March 31, 1660.
[2] Weth. Rec., Feb. 16, 1672.
[3] Weth. Rec., Jan. 1, 1674.
[4] Hart. Rec., Jan. 14, 1683.
[5] Weth. Rec., Nov. 4, 1672; Dec. 25, 1707; April 24, 1713.

highways. This betokens a scarcity in the adjoining fields. It had been previously done in all the towns, for convenience in establishing certain industries near at hand; but later we find private grants taken directly out of the highways and town commons.

Later General Divisions.

For many years after the settlement, grants of a nature already described, together with the accretions and transferences through alienation or purchase, were sufficient to satisfy the needs of the townspeople. The boundaries between the towns became approximately though not finally determined on, and a steady growth in all directions was taking place; in consequence of which, general divisions began to be called for. We know that many of the earliest allotments had been of the nature of general divisions, and Hartford passed a rule in 1639 voiding any such division made by a part of the inhabitants (proprietors) without the knowledge and consent of the whole,[1] and there is afterwards a reference made to a rule adopted for division of lands of a still earlier date.[2] The earliest division of which we have

[1] Hart. Rec., Jan. 7, 1639.

[2] Hart. Book of Distr., p. 582, referring to rule of Jan. 3, 1639. What this rule was we cannot say. It may have been the restatement of the rule adopted when the lands were first allotted. We have extant the list of subscriptions to the general fund according to which the settlers were taxed for further purchases and according to which they received land in the early divisions. In this Mr. Haynes is credited with 200 and Richard Risly with 8 shares or pounds, and others with intermediate amounts. As these amounts are not proportionate to the wealth of the persons mentioned, it is likely that the principle of limitation was applied in Hartford, by which no one was allowed to put in more than a certain amount; thus all would be given a fair share in the divided lands and would bear a proportionate share in the burden of future purchases. This principle was probably applied in New Haven (Atwater's New Haven, p. 109; New Haven Col. Rec., vol. I, p. 43), and we know that it was so in Guilford, where the limitation was £500. (Hist. of Guilford from the MSS of Hon. Ralph D. Smith, p. 54.) That such rule of division with possible limitation was in force in each of the river towns we think could be demonstrated.

record was in 1641, when the vote was passed,[1] though its provisions were not fulfilled until 1666. The tier to be divided was on the east side of the river, and was made up of two parts, in the allotting of which the differences in the quality of land were recognized. In the lower of these parts land was given, we might say, at its par value; that is, every one to whom land was given in the southern tier received one acre of land for each pound of right in the undivided lands, or, as the record says, "one hundred for one hundred"; while in the northern half a premium of five per cent was allowed, that is, for every hundred pounds right the proprietor was to have one hundred and five acres. The first allotment was made in a tier of a mile in width, and as the vote provided for a tier of three miles width, the allotments were all trebled.[2] This was properly an extension of the original allotments, for certainly Wethersfield, and probably Windsor, divided the three mile tract in 1640.

Practically the first general division was that of Wethersfield in 1670. Up to this time the whole territory stretching from the West Fields westwards into the unbroken country was known as the Wilderness, and served as a convenient pasture for the masting of swine. Highways had been cut through it by energetic woodsmen and cutters of pipe-staves, by means of which access was had to the lands soon to be laid out. This land lying along the western boundary the inhabitants proceeded in town meeting to lay off in the shape of a tier a mile in breadth, and to divide it up among the "inhabitants, that is to say, to householders, that live on the west side of Conectecot river."[3] The land was divided into seventy-six shares, one share to each householder. The amount of the share was fifty-two acres, and each received an equal amount, "one man as much as another." They were lots in the good old Saxon sense of the word, for the inhabitants cast lots for

[1] Hart. Rec. I, p. 52.
[2] Hart. Rec., Feb. 18, 1640; Feb. 16, 1665.
[3] Weth. Rec., Feb. 23, 1670.

them; the method is not told us, but he or she (for there were five women among them) who drew lot number one took the first share on the north, number two the next, and so on. One important distinction is at once to be noticed between this grant by the proprietors-inhabitants of land to themselves, and grants of single parcels "by the Towne" to new-comers. In the latter case grants were not necessarily made in fee, many were revoked, but in this case it was expressly stated that the land was to be held by the inhabitant as a proprietor, to be his and his heirs' forever. This emphasizes the view held by the inhabitants regarding the ownership of the undivided lands.

But the growth of the little community soon demanded further division of lands, and a new principle was adopted, much less communistic than the last, which seems to have been based on a "social compact" theory that all men are free and equal and all are to share alike in the distribution of benefits. In 1695 one hundred and sixty-five inhabitants, or their proxy, met for the drawing of lots. Five great tiers were laid out on three sides of the wilderness, and the sharers drew for their position therein, receiving an amount of land proportionate to the tax assessment for 1693, at the rate of half an acre of land for every pound in the list of estate.

In the meantime Hartford had been making a new division, and that, too, along its western boundary. This was done by the proprietors in their own meeting in 1672. The same rule was adopted as had been employed in the earliest divisions. By this time many of the rights had changed hands, but the proportion still remained the same. The basis of division of this tier, which was a mile and a half in breadth, differed so materially from that of about the same date in Wethersfield as to be somewhat striking. Instead of equality we have shares varying from a width of three rods to a width of ninety-one rods, and instead of grants to householders we have a division to original proprietors or their

representatives.[1] The Wethersfield method had a certain advantage, in that a nearly exact division of all the tier could be obtained. In Hartford, however, there was an overplus, and five years later the proprietors took this in hand, and the scheme adopted shows the proprietors in a new rôle which does them credit. This overplus of nearly six hundred acres was laid out in five tiers, running north and south, of which the middle tier was to be divided into twenty-acre lots and the others into ten and fifteen-acre lots, and when this was done, the committee was authorized to "grant these lotts to such of the town of Hartford as they shall see in need of the same, and as they judge it may be advantageous."[2] In point of fact, however, the tiers were divided into much larger lots, and to only thirty-one "needy" persons. Probably the committee put their own construction on the order.

The general division of the Windsor common and undivided lands was long delayed. The first definite proposal to that end was not made until 1720, when a scheme was discussed and voted by the town for laying out and dividing a strip of land running entirely around the township, of a mile in width on the east side of the river and half a mile on the west. But this proposal was met by the protest of the proprietors, and, though the plan continued to be discussed, it was not until 1726 that the two bodies came to an agreement. The town seems to have taken the matter into its own hands, perhaps on account of the wranglings of the proprietors among themselves and the complications which had arisen in their claims. The same trouble resulted from an attempt to divide the Equivalent, a tract of land granted to the Windsor proprietors in 1722 by the colony, to compensate for several thousand acres of their territory which, by the arrangement of the boundary line, had been taken from that town and added to the lands of the Massachusetts colony. As early as 1725 the proprietors voted to divide these 8000 acres to each "pro-

[1] Hart. Book of Distr., pp. 581–582.
[2] Hart. Book of Distr., p. 584.

prietor Inhabitant, according to the list of Real Estate in the year 1723, viz., such Real Estate as the proprietors hold in their own right."[1] It was not until 1743 that a sufficient agreement was reached by the conflicting parties to allow the actual division to be consummated. At that time the mile and half-mile tiers were divided into 219 lots, and the Equivalent into 367 lots, the basis of allotment remaining as before, viz. the list of freehold estate. Windsor made up for her lateness of division by her activity when once started, and from this time on her surveyor was kept well employed.

The enactment passed by the General Court establishing the privileges of the proprietors and creating them a quasi-corporation, brought about in the three towns a final division of the common lands about the middle of the eighteenth century. Windsor led off in 1751, giving to each proprietor a lot according to his list, and then finding some land left

[1] Wind. Propr. Rec., p. 2. The directions given to the committee for division may be of interest:

"1. You are to inspect the list of freehold estate given into the listers in the year 1723, and all lands belonging to orphans set in said List to other persons you are to allow divisions for such lands to the orphans only.

"2dly. Where you have it made evident to you that any person hath put land in that List which he hath purchased and the seller reserved in the time of the purchase his Rights of Division for said Land, in that case you are to allow Divisions for that land to the seller only.

"3dly. You are to lay out the land equally as you can according to the Rule of proportion set by the proprietors in their voat, having Respect to Quantity and Quality.

"4thly. You are to lay out convenient Highways in said Lands according to your best judgment.

"5thly. Where any person in the list of 1723 hath set to him any Lands that he had in Improvement upon the Commons, in that case you are to allow no division for the same.

"6thly. When you have found out the number of the persons that are to receive in the Division, you are to number the Lotts to them, and then cast a lott to determine where each proprietor shall have his lot in the Teare of Lotts in the Division."—Wind. Propr. Rec., pp. 2–3. Similar rules were adopted in most of the divisions made in each of the towns at this time. Regarding the history of the Equivalent, see Stiles. Hist. of Windsor, pp. 260–263.

over, the committee proceeded to "lay to each Proprietor a small lot" in addition.[1] These small lots were from half an acre to six acres in size. Wethersfield followed in 1752, and there we find an unexpected show of legal formula and red-tapeism. The proprietors sat in solemn council and decided to divide. Strengthened by the decree of the General Court, they passed the customary restrictions and limitations in connection with orphans and landlords. Nine months afterwards did the town, quite in submissive contrast to its former votes, establish, ratify and confirm the action of the proprietors.[2] Hartford proprietors two years afterwards did the same, with the same ratification from the town, with, however, an explanatory clause which is worth quoting. "To divide a certain large tract . . . which tract the Inhabitants have quietly held as their own, enjoyed and improved from Time beyond the memory of man, and whereas the Inhabitants being now sensible of great difficulty and contention that is likely to arise with regard to the claims and pretensions of sundry persons claiming in opposition to the method of division agreed upon, and the inhabitants being now very sensible that no division can be made more for the peace and good will of all concerned than that agreed upon, vote that they grant and confirm unto the afores[d] Proprietors, all the afores[d] Common Lands in proportion as is stated in said list for them and their heirs forever."[3] The method agreed upon

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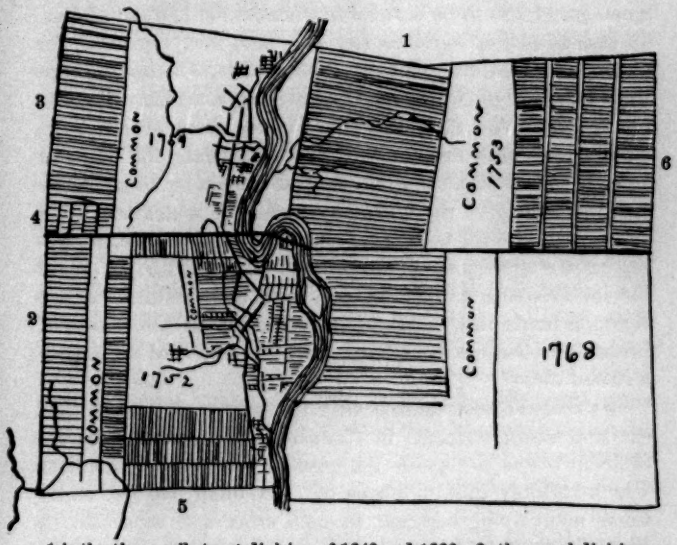
[1] Wind. Propr. Rec., p. 214.

[2] Weth. Rec., Dec. 25, 1752. Proprietors' meeting, in the same volume, Feb. 20, 1752.

[3] Hart. Rec., March 25, 1754. The Hartford division of 1754 was after this manner. The commons lay to the west of the town, and beginning at the southern boundary, thirty tiers of land were laid out, separated laterally by four principal highways and longitudinally by some twenty smaller and shorter highways; the length of this large tract was the width of Hartford township from Wethersfield to Windsor bounds, and its width about one mile. The size of the tiers was very unequal, some being divided into as many as forty lots, while others into as few as five, four, and two. This was partly owing to the position of the already established highways and the coursings of a small but meandering stream. Four

was an apportionment according to the grand list of the inhabitants, made in 1753, with the restrictions as in the other towns.

The following diagram will help to explain what has already been said. It represents the Hartford and Wethersfield townships, and pictures the scheme of tiers or ranges and the land basis of new towns.



1 is the three-mile tract division of 1640 and 1666; 2, the equal division of 1670; 3, the west division of 1672; 4, the overplus; 5, the division of 1695; 6, a division not mentioned before because consummated after East Hartford became a separate township; it was a part of the Five Mile Purchase, and shows the land basis of the town of Manchester.

With these divisions and with the carrying out of a few matters of recompense and equivalents, that all might be

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hundred and seventy-seven proprietors shared in this division, which adjoined the west division lots, now West Hartford, on the west. (From copy of a MS in possession of Mr. Hoadly, found among the Seymour papers.)

content, the mission of the proprietors practically ended. But the association still lingered and meetings were sporadically held. In fact, the common and undivided lands existed in Windsor as late as 1787, and traces of such are found in Hartford in 1785. The last meetings of the proprietors were chiefly for the purpose of appointing committees to search for undivided land, if there should be any remaining, which when found was to be divided to whomsoever had any claims. In case all claims could be met and land still remained, the committees were ordered to sell the residue, whether of lands undivided or of lands left for highways which were not needed, and after deducting from the amount arising from such sales a sum sufficient to pay themselves for all their trouble and expense, to give over the remainder to the ecclesiastical society of the town, the interest of which was to be appropriated to the support of the ministry or school, according to the discretion of the society. Thus with the object for its existence withdrawn, and with the resolution of the common lands into holdings in severalty, the association of proprietors became no longer necessary and died for lack of a *raison d'être.*

It will have been noticed that the system of general land division which obtained in Connecticut only differed in the different towns as regards the basis of allotment. The form was invariably that of ranges or tiers, often one but sometimes many lying adjacent to each other and separated by highways. These tiers were shared into sections or strips generally designated as of so many rods width, for the length would be uniformly the same. It is difficult to see the economic value of the extreme length of many of the sections thus laid out. When the length of a lot is three miles and its width a few rods, successful agriculture must be at a disadvantage. In many cases these were wood lots, but by no means in all. It is evident that many of those who received shares in the division sometimes sold them before they took possession, and it was to prevent such action that the Hart-

ford proprietors voted at the time of the division of the overplus that no one should sell his lot before he had fenced it in and improved it.[1] Generally, however, farmers soon removed to their sections and began improvement and cultivation, and it happened, as might have been expected from the shape, that great inconvenience resulted in preserving the bounds and cultivating the narrow strips.

As yet nothing has been said of the division of the Five Mile Purchase, the tract granted by the General Court to the towns in 1673. For our purpose it is only interesting as showing the origin of a proprietorship. The towns on receiving the grant at once provided for its purchase from the Indians, by a rating distinct from the other town rating, "that so the just sum of every man's payment to this purchase might be known for an equal division of this land according to their payments."[2] The rate was a halfpenny upon the pound in Wethersfield, and one hundred and fourteen inhabitants became the proprietors of this tract. The highest amount subscribed was seventeen shillings eight pence, and the smallest nine pence;[3] this to pay for a tract containing thirty square miles! For drawing up a special rate a special committee was appointed. Stringent rules were made regarding such as neglected to give in a new list at such a time, and in case any person falsified his statement and put in lands not owned he was denied a share in the common division. Special summons were given to the inhabitants at the time of drawing, as well as information as to where it was to be done, and the town clerk was the secretary of the meeting.

Proprietors' Commons.

For a long time the common lands above described were in the hands of the proprietors or inhabitants-proprietors of

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[1] Hart. Book of Distr., p. 584.
[2] Weth. Rec., Oct. 10, 1673.
[3] Weth. Land Rec. III, p. 63.

the town, but it must not be supposed that the exclusive privilege of these large tracts of unimproved land was confined to the limited number who claimed ownership. In practice all the inhabitants made use of these commons, as the above quoted vote of the Hartford inhabitants shows, restricted only by self-imposed limitations, passed in town meeting. The value of the commons before division lay in their furnishing pasturage for horses, cattle and sheep, and providing the town with timber, stones, earth and grass. It is uncertain just where the earliest of these lay; there is little doubt, however, that many of the fields mentioned in the books of distribution were at first used as commons and soon after divided. Traces of them are found in Hartford in the old ox pasture, the ox pasture and the cow pasture. But the greatest commons were set off some years later when the cultivation of sheep assumed prominence. All the towns had these large strips of commonage, from half to three quarters of a mile wide. Wethersfield in 1674 laid off a large tract containing a thousand, and afterward twelve hundred acres, "to remain for the use of the Town in general for the feeding of sheep and cattle forever."[1] The Hartford tract, divided in 1754, retained its old name, the "Town Commons," for some years after it had ceased to be such. There was also the half-mile common next the Wethersfield west division, and the half-mile common on the east side of the river in Windsor township, and the larger tract in the same township adjoining the lands divided in severalty on the west side. All the New England towns had these fields of common land, for the settlers had been accustomed to the tenure in England, where it had existed from earliest times. In fact, the principle of commonage is as old as the settled occupation of land itself, and is not confined to any one class of people, but can be found among nearly all in some form or other. The large stated commons of New England were used by the majority for pasturage for their animals, yet all

[1] Weth. Rec., Jan. 1, 1674.

cattle were not so kept, and we find in Connecticut enclosed pastures as well.[1] The expense of pasturing cattle on the commons was borne by the owners in proportion to the numbers and age of the animals. Town herders were paid in this way. Grants had often been made out of the common lands, which are to be distinguished from the stated commons, and such were reckoned to the owners as so much deducted from their share in the final division; but as soon as commons were established, granting from that quarter was stopped.[2] The boundaries of such commons were, after the fashion of the time, somewhat loosely laid out, and even in 1712, seventy-two years after the allotments in the "west field" of Wethersfield, it was found necessary to determine the line which separated that field from the adjoining common. If this were the case with the line adjoining the lands in severalty, much more must it have been true of the other boundary lines.[3]

Communal holding of land does not seem to have been known. Land held in common was subject to the use of a stated number, and when the inhabitants voted that so many acres of land were to be a settled common and "to remain for the use of the town in general for the feeding of sheep or cattle forever," the town was conceived of as composed of the inhabitants, an always increasing quantity, and town land was the property of the proprietors-inhabitants, and is so definitely stated.[4]

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[1] Weth. Rec., Dec. 31, 1683.

[2] Weth. Rec., Dec. 28, 1685. Encroachment on the commons as well as on the highways was a not infrequent offense. Sometimes the encroachment was sustained if found "no prejudice" by the town, though quite as often removal was ordered, and force employed if compliance did not ensue. Hart. Rec., Sept. 2, 1661; April 22, 1701; Weth. Rec., Dec. 25, 1704.

[3] Weth. Rec., Dec. 24, 1712. "At the same meeting ye town voated to have these lands which are refered for sheep commons or sequestered land layed out and bounded." Wind. Rec., Dec. 29, 1701.

[4] "For the use of the Town, viz. the inhabitants-proprietors." Weth. Rec., Mar. 15, 1707–8.

The proprietors-inhabitants held the land in common, and as they voted in new inhabitants not through their representatives, the townsmen, but in person in town meeting, it consequently lay in their power to admit new members to the privilege of having rights in the common field, and thus in theory, if they had any theory about it, neither stated commons nor undivided lands were town lands, though the records often call them so, but tracts for the use of a definite number of individuals, who called themselves the inhabitants-proprietors, and whose share, while not stated in so many words,[1] was generally recognized as proportionate to their purchased rights in the common and undivided lands. By later acts of the General Court, the corporate nature of the proprietors was recognized. In 1717 it was declared that all fields which at that time were considered common and so used should be so legally until the major part of the proprietors should vote for their division.[2] This was merely legalizing custom; such had been the common law for many years. A legal proprietors' meeting required the application of at least five persons to the justice of the peace for a warrant for a proper meeting, requiring proper warning six days before and a notice on the sign-post twenty days before.[3] Thus the proprietors became a regularly organized body, holding meetings, levying taxes on themselves for defraying the expenses of fences, gates, etc., and appointing rate-makers and collectors.[4] They also chose a clerk, who entered acts and votes, was duly sworn,[5] and held his office until another was sworn.[6]

One of the most troublesome matters which arose in con-

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[1] One vote, in recording a project for division, in which the major part of the proprietors decided the method to be employed, says "the voices to be accounted according to the interests that said persons have." Weth. Rec., Dec. 24, 1705.

[2] Col. Rec. VI, p. 25.

[3] Col. Rec. VI, p. 424.

[4] Col. Rec. VII, pp. 379-380.

[5] Col. Rec. VI, p. 25.

[6] Col. Rec. VI, p. 276.

nection with the commons was the prevention of trespass and damage. We have already noticed a sort of frontier lot-holder, who was granted lands on condition of his serving as ward of the commons. This protection was mainly against inhabitants from other towns, and intruders who had in some way come into the town itself. Temporary votes, however, were constantly passed, regulating even the proprietors' rights. Timber was carefully guarded. It was forbidden to all to cut down young trees, and any tree felled and left three months became public property. Carrying wood out of the town was almost criminal, no matter for what purpose. Yet, notwithstanding these constant decrees, damage continued to be done. Finally Wethersfield complained that the inhabitants-proprietors could hardly find timber for the building of houses and making of fences, and the lines of prohibition were drawn still tighter. The evil, however, was not entirely done away with until the final division of the remaining lands.[1]

One other matter in reference to the common fields is of interest. Every person in the towns above fourteen years of age, except public officers,[2] was obliged to employ one day in the year clearing brush on the commons. The townsmen appointed the day and all had to turn out. If any neglected to appear on that day he was fined five shillings.[3] On one occasion the undergrowth evidently got ahead of the inhabitants, for they voted to work that year one more day than the

[1] The General Court as well passed acts forbidding the cutting, felling, destroying and carrying away of any tree or trees, timber or underwood. The act of 1726 recognizes the distinction between town commons, in which case trespass was accounted as against the inhabitants of the respective towns; common or undivided land, in which trespass was against the proprietors; and private lands, in which the person trespassed against was the individual owner. Conn. Col. Rec. VII, 80-81. On the subject of trespass see Weth. Rec., May 11, 1686; Dec. 25, 1693; Dec. 24, 1705; Dec. 23, 1706; Wind. Rec., Dec. 27, 1655; June 1, 1659; Nov. 11, 1661, and the volume of Wind. Prop. Rec.

[2] The minister of the gospel was a public officer in 1670, as he is to-day in Germany.

[3] Col. Rec. II, p. 189.

law required.[1] The fine of five shillings undoubtedly in many cases became a regular money payment in lieu of personal labor. This equal responsibility of all for the well-being of the town is one of the best evidences of its peculiarly democratic character, an extension of the same principles which were at work in the founding of the State. It may be a *descensus ad ridiculum* to pass from the establishment of the fundamental articles to shooting blackbirds, but it is just as much a government by the people, a controlling of their own affairs, when every rateable person was required to kill a dozen blackbirds in March, April, May, and June, or else pay one shilling to the town's use.[2] And it was the same obligation which called out the inhabitants to work on the commons.

Common Meadow.

We have already spoken of the common or undivided land and the stated commons, but it is necessary to distinguish another class of common holding. This was the common meadow, early divided in severalty, which belonged to those proprietors who owned land therein. At first all the proprietors had a share in the common meadow, and for a long time after there remained land undivided, so that practically most of the inhabitants had a share. But with the sale of lands, and the consequent accumulation of many lots in single hands, the number of proprietors decreased, and an increasing number of the town inhabitants had no part in their meetings. These meetings, at which all who had a lot in the meadow were entitled to be present, are technically to be distinguished from the proprietors' meetings already spoken of. Practically they were composed of the same men who, as proprietors of the common meadow, came together to discuss questions of fencing, trespass, and rights.

These are the meadows, the regulation of which has been

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[1] Weth. Rec., May 11, 1686.

[2] Windsor Rec., Dec. 16, 1707.

found to bear such a striking resemblance to certain forms of old English and German land-holding. There is nothing specially remarkable in this identity. It was the influence of English custom which can be traced back to that interesting law of the Anglo-Saxons, "when ceorls have an allotted meadow to fence," which is the earliest English evidence of a common meadow.[1] These meadows became the Lammas fields of later England, which were cultivated for six months in the year, and were then thrown open for common use for six months. This state of things existed until the Enclosure Acts struck the death-blow to common tenure. But the settlers left England before these acts were passed, and the common meadow system has been found to have been applied by them from Salem to Nantucket.

This common meadow was enclosed by the common fence. In the river towns nature provided half the fence—the Great River—and the proprietors half. It would have been impossible to have surrounded each small plot of meadow land with a fence, and it would have been needlessly expensive and wasteful, as the spring freshets would have carried them off yearly. Even the common fence was not always exempt, and early had to be moved to higher ground. The lands which had been allotted within the meadow were divided by meer-stones at each corner, and hunting for meer-stones must have been a very lively pursuit then, as it occasionally is now. These meadows were owned by a definite number of inhabitants, who had fixed allotments of a definite number of acres, and who cultivated these lands for half the year. This gave to each proprietor a certain right in the meadow, according to which his share in the maintenance of the fence was determined, and the number of

[1] Laws of Ine, §42. Schmid, Gesetze der Angelsachsen, p. 40. By this is not meant the *gemaene laese* or common pasture, but the *gedâl land*, that which is held by a few in common. The former bears a certain resemblance, which is the result of its own influence, to the commons, in their capacity as the common pasture.

animals he was entitled to admit on the opening of the meadow was established. This opening took place at a given date, quite as often fixed in town meeting as in proprietors', and cattle and horses were allowed to enter the fields and pasture on the stubble. Sheep and swine were not admitted; each had its own pasture; sheep were fed on the stated commons and swine were turned wholesale into the wilderness. No herder was required during this period, which lasted from November 11 to the 15th of April, through practically the cattle were withdrawn with the opening of winter.[1] Later this period became a moveable one and sometimes began as early as October 13. Evidently, at first, by tacit consent, it was allowable for certain proprietors to bait their animals in the common meadow upon their own holdings, if they so wished, during the summer. This was afterward restricted to week days, and finally abolished, as possibly too great a waste of time. The breaking loose of such baited animals and the breaking in of loose cattle to the meadow was a constant source of trouble, for great damage was done thereby to the corn and grass of others, and fines were frequent. Such animals were accounted *damage feasant*, a legal phrase which

[1] There are curious and unexpected outcroppings throughout the old records of bits of English custom, as shown by names, dates, and common usage. Not only are these New England common meadows almost identical with the Lammas Fields and with the earlier Saxon meadow and arable, but this date, November 11 (Martinmas day), was the day of opening the Lammas Fields in Old England, and the time when the tenant paid a part of his rent. In other entries we find a period of time stated as "from Michaelmass to the last of November," "a week before Micheltid," and again, "fourteen night after Micheltid." The renting of the town lands of Hartford was from Michaelmas to Michaelmas. This was a direct following of the English custom of rents. How did the Puritans happen to retain and actually make use of these when they knew them to be "popish"? In the description of Hartford lands the term *messuage* is very often used, and continued to be used for many years. It sounds as if it might have been taken out of the Hundred Rolls or Liber Niger or Domesday Book, as signifying a cottage holding, so familiar is it to the student of early English tenures. In this country it was used in the sense of a homestead. The use of turf and twig has already been noted

the old town clerks spelled in extraordinary ways. The sowing of winter grain was continued, and this, of course, would, if sown in the common meadow, suffer from the loose animals, so that, for a long time, a regular keeper was employed by the proprietors to guard the sown land, and afterwards it was required that all who wished to sow winter grain must fence it in. The customs regarding the common meadow are, some of them, still in existence. Permanent fencing has in many quarters encroached on its decreasing area, which, owing to the washings of an erratic river in the alluvial soil, has been in some quarters reduced nearly one-half, while in others there has been an increase. The cattle and cow rights, which were formerly so important, and were bought and sold, thus giving outsiders an entrance into the meadow, have been given up within twenty years. But the practice of throwing open the meadow about the middle of November—a date decided by the selectmen—is still continued.

Alienation of Land.

For the first seventy years of colonial history in the Connecticut Valley one notices a spirit of self-sufficiency in all matters which concern individual town interests. The communities felt that a careful husbanding of their own resources was necessary to swell their own subsistence fund. Apart from the fact of legal subordination to the General Court, the valley towns were within their own boundaries as exclusive as a feudal knight within his castle. No magic circle could have been more impassable than the imaginary lines which marked the extent of the town lands. This principle of town separation; the maintenance of its privileges as against all intruders; the jealousy with which it watched over all grants to the individual inhabitants, taking the greatest care that not one jot or tittle of town rights or town possessions should be lost or given up, characterizes everywhere the New England towns, and though a narrow, it was yet a necessary view. It made them compact, solid foundations, and bred men who,

while ever jealous for their native heath, never failed in loyalty to the State.

In no particular was this spirit more clearly evidenced than in the town's attitude toward the alienation of land. It is a subject worth elaborating. Apart from commonage, no link connecting the present with the past stands out in bolder relief, as if proud of its antiquity. The principle is found everywhere, and runs back to the beginnings of community life, that in case of sale of an allotted tract of land, the seller must first offer it to the inhabitants of the town itself before looking elsewhere for a purchaser. In Connecticut the need of securing the town lands from falling into the hands of outsiders was so strong that the General Court even went so far as to pass a law to this effect, forbidding any inhabitant to sell his "accomodation of house and lands until he have first propounded the sale thereof to the town where it is situate and they refuse to accept of the sale tendered."[1]

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[1] Col. Rec. I, p. 351. This is a widely recognized principle of community life. M. de Laveleye has shown by concrete examples that it exists in Russia, Switzerland, France, and in Mussulman countries, as Algeria, India and Java (Prim. Prop., pp. 11, 151–2). In those countries where community of holding was the rule, of course a law against sale can refer only to the house lot. It is a necessary part of primitive community life, where it was almost a religious tenet that the lands remain in the possession of the community. It has its origin in the patriarchal family which developed into the patriarchal community, wherein every member of the association was considered as owning a share in the lands of the commune, and therefore had a lawful right in the land which each cultivated. This may look back to the time when the community was but a large family under the patriarch, and when the principle of heirship gave to each a share in the common property. If this be its origin, it is curious to see that the New England towns applied this principle from economic reasons, for the safety and development of the town seemed to depend on some such rule. Such principles must have been known to the settlers, though only partially in practice in the English parish (see note 3, p. 84). It cropped out in its completeness on New England soil, though even there in some towns there was no more elaborate application than had been known in the mother country. To explain it it is not necessary to suppose a return to a primitive system; there is no missing link in the chain of direct descent from Germany to America.

This law was passed in 1660, and is the only instance in New England history in which the towns were unable to settle such matters for themselves.[1] The will of the court was binding, for the towns did not consider themselves sufficiently independent to interpret this law as they pleased. In 1685 they asked through their representatives whether the court intended that all lands within the township should "be tendered to sale to the town before any other sale be made of them to any other than the inhabitants of the town" where they were situated. To this the court answered in the affirmative.[2] One of the towns had already construed the law very strictly, though the above appeal to the court seems to show a growing uneasiness under the strictures of a prohibitive law.

Wethersfield declared in special town meeting regarding the division of 1670, that "no man or person whatsoever, who either at present is or hereafter be a proprietor in the lands mentioned shall at any time, either directly or indirectly, make any alienation, gift, sale or other disposition of his property in the said lands to any person who shall not be for the time being an inhabitant of this town."[3] In case such alienation took place the proprietor's right was forfeited, the sale void, and the land returned to the town for reallotment by the proprietors. This injunction, however, had to be twice repeated. Notwithstanding which there were sold, some time within the next fifteen years, six of these lots, and the attention of the town having been called to it, in order that the former vote should not be a mere dead letter, it was ordered that the lots be recovered and returned to the town. The committee of one appointed to recover was given two of

[1] The question was brought up in the Massachusetts Court as to whether the towns had the right of pre-emption or forbidding of sale. No action was taken, and possibly the court thought the matter a subject for town management. Mass. Col. Rec. I, 201.

[2] Col. Rec. III, 186–7.

[3] Weth. Rec., Mar. 8, 1670–71.

the lots as payment, and the remainder reverted to the town. It would be interesting to know whether this restriction upon freedom of sale was actually carried out.[1]

The town passed a similarly binding law at the time of the second division, but nothing further is heard of the matter. Hartford having voted in 1635 that the offer of house-lots must first be made to the town, or to some one of whom the town approved, said nothing more about alienation, and the General Court order was passed before it made another division. Windsor began to divide after such laws had ceased to be necessary, and made no restrictions on sale; but in many other towns in the colony the principle was applied. The object of such a law was evidently twofold: to prevent town lands from falling into the hands of persons dwelling in other towns or colonies, with the consequent loss to the town of all the fruits of its own territory, and to prevent the admission of persons likely to be obnoxious or injurious to the town's interest; for Hartford and Windsor each required—at least in a few instances—that the owners of land should secure the town against damage resulting from sale to an outsider.

There is little doubt that rules of this nature in practical application were often relaxed. Hartford allowed in 1640 to all her original settlers the privilege of selling all the lands that they were possessed of, and there is plenty of evidence that sales had taken place from the earlier divisions, though not to persons dwelling out of the colony. The increase of inhabitants would make the enforcement of such a rule a matter of constantly greater difficulty. In comparing the Wethersfield order with those of other towns, we find none so strict in the declaration of the alienation principle.[2] Others allowed, as did Hartford in one instance at least, in case no purchaser

[1] In 1696 an inhabitant applied to the town for liberty to sell an individual grant, on account of necessity. The liberty was granted. Evidently the principle against sale without permission was still enforced. Weth. Rec., Aug. 7, 1696.

[2] Egleston, Land System, J. H. U. Studies IV, pp. 592–594.

was found in the town itself, the effecting of a sale elsewhere, generally with the approval of the community. But the fact that the inhabitants of the town practically controlled the land divisions, while in Hartford and Windsor they were managed by the proprietors, together with the presence of a General Court order, may account for the absence from the records of the latter towns of as elaborate an order against alienation as is found in Wethersfield.

Evolution of New Towns.

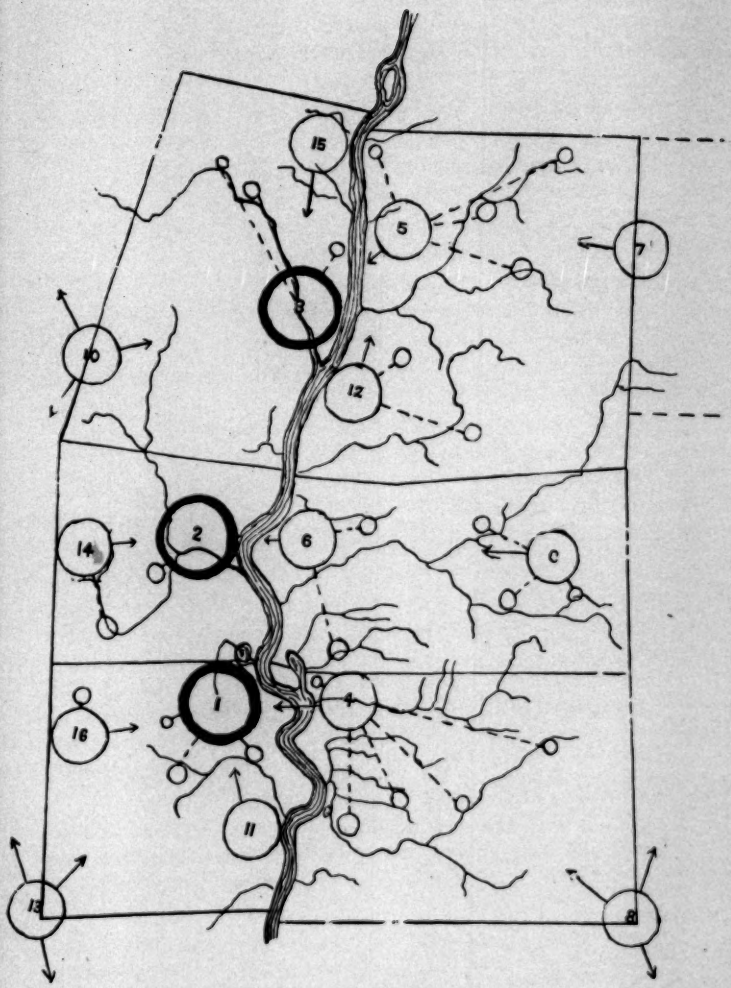
The river towns were prolific mothers. Ten daughters now look to them for their origin, and the total number of communities contained within the historic boundaries of the early settlements now equals the number of the original colonies. Windsor has been the mother-stock from which four towns have been severed; Wethersfield three, and Hartford three.[1] In the various allotments of lands do we see the beginnings of new towns. The isolated settler (at first probably with temporary summer residence which afterward became permanent) would be joined by others to whom the town made single grants in that quarter. The lands on the east side of the river were early used for farming, and the site of future towns became a source for hay and a corral for keeping cattle. The development of such a centre was by gradual accretion. In the event of a general division of land, many of those who received shares withdrew to these lots, and, erecting houses, began the nucleus of a town. The original outlying districts were called Farms, and this nomenclature

[1] Windsor: East Windsor, South Windsor, Ellington, Windsor Locks. Wethersfield: Glastonbury, Rocky Hill, Newington. Hartford: East Hartford, West Hartford, Manchester. No account is here taken of Farmington and Simsbury, as these sections were not included within the limits of the river towns, although by general consent they were considered as belonging, the former to Hartford and the latter to Windsor. Nor are there included those portions of territory which were cut off to form but a part of another town, as Berlin, Bloomfield, and Marlborough.

is generally found in the Connecticut colony.[1] The dwellers in the farms still continued to be present at the only meeting-house in the township, and to cross the river or the belt of dense woods for attendance at the monthly town meeting. But it was not long before that oldest of institutions, the village pound, which is said to be older than the kingdom, was established and formed the first centralizing factor. Before the community was recognized as either a religious or a civil unit, before a thought of separation had entered the mind of its founders, it received permission to "make and maintain a pound"[2] for the common use of the settlers, sometimes without condition, sometimes subject to the approval of the town. The pound began the process of separation; in this one particular a settlement became economically independent, and the greater privileges only awaited an increase in the number of the inhabitants. The next step in the separating process was generally an ecclesiastical one. Sometimes the religious and civil steps were taken at the same time, as was the case in Glastonbury, where the difficulties of crossing a large river hastened the process. In other cases

[1] In a catalogue of ministers in Massachusetts and Connecticut, by Cotton Mather, is the following: *Windsor*, Mr. Samuel Mather; and *Farme*, Mr. Timothy Edwards. The term *side*, though used in Connecticut, does not seem to have had so distinctive a meaning as in Massachusetts. Yet it is found to designate the halves of a town divided by a rivulet, as in Windsor and Hartford. Each *side* had its own meetings and its own officers in Hartford. "To secure the said Town and Side from damage." (Hart. Rec., p. 153.) Yet in no case did a *side* grow into a separate town, though at times certain officers, as haward, were chosen by the *side*.

[2] Weth. Rec., Feb. 24, 1673; Oct. 15, 1694; Hart. Rec., June 9, 1645. Glastonbury claims the first recognition of that part of Wethersfield as an independent community to be the act of the General Court in 1653, giving the Eastsiders liberty of training by themselves. (Chapin's Glastonbury, p. 37.) This was twenty years before that part of the town was granted a pound. The date of the beginnings of recognition can even be put back two years farther, when in 1651 liberty was granted to the Farms anywhere in the colony, of reserving for their protection one able-bodied and fully armed soldier on training days. (Col. Rec. I, p. 222.) In the case, however, of original settlements, setting up a pound was one of the first acts.



EVOLUTION OF NEW TOWNS.

1 Wethersfield.
2 Hartford.
3 Windsor.
4 Glastonbury, 1690.
5 East Windsor, 1768.
6 East Hartford, 1784.
7 Ellington, 1786, lying partly in the Equivalent.
8 Marlborough, 1803.
9 Manchester, 1823.
10 Bloomfield, 1835.
11 Rocky Hill, 1843.
12 South Windsor, 1845.
13 Berlin (1785), 1850.
14 West Hartford, 1854.
15 Windsor Locks, 1854.
16 Newington, 1871.

The smallest circles represent villages legally a part of the towns to which they are attached. The arrows on the severed towns point to the original town of which they were formerly a part. Towns with three arrows were formed from land taken from three original townships. The above are the original boundaries of the River Towns, but the river course is as at present.

the difficulties of winter attendance led to the granting of winter privileges, that is the privilege of having service among themselves during the winter. Even the stiff-necked Puritans did not relish the idea of travelling five, six and seven miles to church, and foot-stoves and hot stones were not so comfortable as the neighboring room where they would meet to worship together. Often, however, winter privileges were not sufficient, and "liberty of a minister" was asked for from the first. In this case a meeting-house was generally built and minister's rates established, and a grant of land made. Here we notice the paternal character of the General Court, for though the petition was generally sent to the authorities of the town of which they formed a part, yet it invariably had to be confirmed by the central power. Sometimes the Assembly paid deference to the wishes of the town, as in the case of South Windsor, where, finding Windsor unwilling to consent to the separation, it requested the petitioners to wait.[1] In East Windsor the report of the committee appointed to consider the petition was adopted, notwithstanding some remonstrance from the Southsiders.[2] Again, in the case of Ellington, the town of Windsor granted the petition temporarily, retaining the privilege of again demanding ministerial taxes when she pleased. But the Assembly a little later freed them from this, and granted them a permanent ecclesiastical separation.[3] With the granting of winter preaching went the remission of a third of the ministerial taxes, and with the granting of full privileges an entire remission of these taxes and a grant of land to the new ecclesiastical centre for a parsonage. Then followed the incorporation of the society, for the church did not become legally established with the corporate powers of a parish until it had received a charter from the Assembly.[4] When this act was completed, town and parish were no longer coterminous. The inhabitant of the township attended town meeting in the central

[1] Stiles, Windsor, pp. 292 ff. [2] Ib. pp. 226 ff. [3] Ib. pp. 267 ff.
[4] Col. Rec. V, p. 374.

settlement when he wished, and worshiped God at the neighborhood meeting. Town and parish records were now kept distinct from each other, the society had its own committee and collected its own rates;[1] as far as practical separation was concerned the two settlements were already independent. The obligation to perform religious duties was felt to be greater than that of attendance on civil assemblies. Absence from town meeting was not uncommon, from worship rare.

While this process was going on, a gradual political independence was taking place. This began with the election for the growing community of sundry officers, such as haward, fence-viewer, and surveyor, who were generally inhabitants of the settlement, and served only within its borders. The embryo town was gradually assuming shape. It had its pound, its meeting-house, its ecclesiastical committee, its school and special officers, and many a village in Connecticut is in the same condition to-day, often thinking little of the next step, which only an active desire for civil independence brings about. In the case of Glastonbury, winter privileges, full ecclesiastical privileges, and political independence were consummated at one stroke; but with many of the other towns the process was slow. Sometimes incorporation was granted at the first petition, more often frequent petitions were necessary.

It is difficult to defend Professor Johnston's idea of incorporation.[2] All the towns of the Connecticut colony were either offshoots from the original town in the way already pointed out, or they owed their settlement either to the movements of dissatisfied members of the older communities, or (because of a favorable situation for a plantation) to the efforts of the court, or of some private individual to whom land had been granted. In the first of the latter cases, as soon as the idea of settlement took practical shape, a petition was sent to the General Court praying for permission to inhabit the selected spot.

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[1] Col. Rec., Oct. 12, 1699. [2] Johnston, Connecticut, pp. 76, 136.

This was generally granted with readiness, often with advice and encouragement, if done in an orderly way, and a committee was appointed by the court to report on its feasibility, and to superintend the settlement and have charge of the division of lands. In the second case a committee was directly appointed, which was instructed to dispose of the lands "to such inhabitants . . . as by them shall be judged meet to make improvements thereof, in such kind as may be for the good of the commonwealth."[1] Sometimes the colony purchased the land, and the amount was to be repaid by those who took allotments there.

Then the process of settling in the new quarter began, under the watchful eye of the court, and under the direct charge of the Grand Committee, as the town records call it. This committee governed the plantation until it was incorporated; it made rules for the planters, prescribed the conditions of settlement, as that the lands should be dwelt upon for at least two years, and that improvements should begin at once by ploughing, mowing, building and fencing; it selected the site, laid out the home-lots, disposed of them by sale or grant, looked after highways and fences, made suitable provision for the church, minister and schools, and in fact did all that the town authorities of an incorporated town were accustomed to do. "They were to found a town, to organize it, and to supply it with locomotive force until it got legs of its own."[2] After this process of nursing, the infant settlement became weaned from the direct control of the court, to which it owed its existence, and upon which it was entirely dependent through the Grand Committee, until the court itself at length severed those ties which bound it, by the decree of incorporation. This often took place within a year, as in the case of Mattabeseck (Middletown), or within four or five years, as in the case of Massacoe (Simsbury). The town was now entitled to the privileges and subject to the burdens

[1] Col. Rec. I, p. 161.

[2] Bronson's Waterbury, p. 8.

of the other towns; it now elected its constable, and presented him to the court for approbation and oath; it chose its deputies, its town officers; began its town records, admitted its own inhabitants; in a word, did all that the committee had before done. For the first time it became independent, for the first time attained to that degree of self-government which the river towns possessed, limited though they were by the overshadowing of the General Court. Incorporation meant a great deal; besides self-organization, it meant payment of rates, "in proportion according to the rule of rating for their cattle and other visible estate";[1] it meant a constable, deputies and freemen; in brief, it meant manhood. In case of towns incorporated within the first sixty years, no objections were made to granting them this privilege. The colony needed new towns, and encouraged their settlement and growth by every possible means. But after that time, when the majority of incorporated towns were severed sections of an old town, incorporation became a different matter. Had it been granted to every petition, it might have been construed as a mere form; but it was by no means so granted. The General Court was the power above the town, and was always so recognized. The town was less a republic than she is now. East Hartford petitioned for sixty years for the privileges which incorporation carried with it. The term meant something, it was the admission into the body politic of an organized community, but the right of deciding when it was properly qualified lay with the Assembly, and it had no rights except what that body allowed it. It is worthy of notice that it was as a rule the lower house which negatived the petition. Too often the records of the colony chronicle only the birth; the travail attending it can only be fully understood by searching the minutes of town and church. The word of the court was final, and without exception was desired, waited for and accepted.

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[1] Col. Rec. I, p. 228.

The same was true of ecclesiastical incorporation. Questions regarding religious differences, the settlement of ministers and the organization of churches, were interfered with or settled either with or without the request of the town. But with the later divisions of churches and the establishment of separate parishes, the position of the State church gradually ceased for the Congregationalists. New denominations came into the field, which received recognition, thus estopping in such cases the Assembly from any interference in matters of church organization or separation. The town lost even its distinctive position as a parish, and became merely a local administrative body.

III.

THE TOWNS AND THE PEOPLE.

We have now examined the nature of the causes and circumstances which led a remarkable people into this quiet Indian valley. We have investigated their relations to the soil which they cultivated, and the manner in which they endeavored to so apportion it that the greatest good might come to the greatest number. It now remains to discuss the conditions existing among the people themselves, in their civil and administrative capacity, to discover the real strength of their town life, that we may perhaps the better understand what was the home environment of those men, whose combined actions as a body politic have called forth deserved admiration for the history of a vigorous State.

Freemen, Inhabitants, Householders, Proprietors.

No one of the characteristic differences between Massachusetts and Connecticut is so well known and so far-reaching as the extension of the privilege of freemanship. The errors which must accompany a restriction of the suffrage to church members find no place in the Connecticut fundamentals. The platform was broad, and based on the opinion of the majority of the people composing the commonwealth. The theocratic limitation takes for granted a falsity: that every church member must of necessity be the most worthy participator in civil affairs. Thus there would be admitted to the franchise men of inferior and unworthy qualifications, while many of sagacity and wisdom, and often greater conscientiousness, would find themselves debarred.[1] No greater privilege could be accorded to a town and its inhabitants than that inserted in the first section of the constitution of 1639, that

[1] Ellis, Puritan Age, p. 209.

choice of the governor and magistrates "shall be made by all that are admitted freemen and have taken the oath of Fidelity and do cohabitte within this jurisdiction (having beene admitted Inhabitants by the major part of the Towne wherein they live) or the major parte of such as shall be then present."[1] This, then, threw the burden on the inhabitants of the different towns, who, so far as the constitution went, might regulate the admission of additional inhabitants as they pleased. That the same general rules for such admission were operative in each of the towns is undoubted, otherwise the equity of the law would have been destroyed.

Before going further, then, it is necessary to examine the conditions which influenced the inhabitants of a town in adding to their number. For the first sixty years the township and the parish were identical. There was one meeting-house, and here met inhabitants to perform both civil and religious duties. The affairs of town and church were alike passed upon at the civil meeting, and it is not surprising that the religious atmosphere lingered in the historic edifice to influence the words and acts of a purely civil body. The conformity to the laws of the church would compel a recognition of its precepts in matters of government. Theoretically, church and state were separated; practically, they were so interwoven that separation would have meant the severance of soul and body. Consequently, whosoever failed to meet an approval based on the general principles of doctrine and ethics which the church believed in, would be rejected as an unfit inhabitant. But such unfitness must not be construed as in any way comparable with the narrow lines laid down in Massachusetts. For the town's own protection it was necessary that all who would be burdensome to it, or would, from factious or drunken conversation, be damaging to its interests or its reputation, should be forbidden admission.

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[1] Col. Rec. I, p. 21. The passage in parenthesis was probably inserted in 1643, when an amendment to that effect was passed by the General Court. (Col. Rec. I, p. 96.) For the Oath of Fidelity see Col. Rec. I, p. 62.

The opinion of the majority was likely to be averse to all positively out of harmony with their Congregational tenets, such as "loathsome Heretickes, whether Quakers, Ranters, Adamites or some others like them." It was not, however, until 1656 that the General Court, following the recommendation of the Commissioners for the United Colonies, passed an order forbidding the towns to entertain such troublesome people.[1] But no one became a permanent resident of the town until he was admitted an inhabitant. The floating body of transients were a political nonentity, and though from the nature of things they formed a necessary element, one can hardly call them, as does Dr. Bronson, a rightful element.[2] Their rights were meagre in the extreme, and the towns, paying them a scant hospitality, got rid of them as rapidly as possible. As early as 1640 Hartford passed a vote ordering that whosoever entertained any person or family in the town above one month, without leave from the town, should be liable for all costs or troubles arising therefrom, and at the same time might be called in question for such action.[3]

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[1] Col. Rec. I, pp. 283, 303. Compare Bronson, Early Government in Connecticut, p. 312.

[2] Bronson, Early Government, p. 311.

[3] Hart. Rec., Jan. 14, 1639. Probably Wethersfield and Windsor passed similar orders, though the records are missing for the first fifteen years. It is evident that the same economic reasons against alienation or rent of land to strangers without giving security were at work in the English parish, so that in this particular the colonists simply enlarged, on account of the greater dangers of their situation, a condition with which they were familiar. Notice this by-law of Steeple Ashton parish: "Item: whereas there hath much poverty happened unto this parish by receiving of strangers to inhabit there, and not first securing them against such contingences . . . It is ordered, by this Vestry, that every person or persons whatsoever, who shall let or set any housing or dwelling to any stranger, and who shall not first give good security for defending and saving harmless the said Inhabitants from the future charge as may happen by such stranger coming to inhabit within the said parish,—and if any person shall do to the contrary,—It is agreed that such person, so receiving such stranger shall be rated to the poor 20 sh. monthly over and besides his monthly tax." (Toulmin Smith, The Parish, pp. 514-15; see also p. 528 for a similar by-law in Ardley parish, Hertfordshire.)

Can we not fairly say that before 1657 there was universal suffrage in Connecticut, and approximately complete representation? It was more universal than it is now, for freemanship was conferred upon all above sixteen who brought a certificate of good behavior from the town.[1] This ideal democracy is the more striking when we realize that in Massachusetts none but freemen (chosen by the General Court) could "have any vote in any town in any action of authority or necessity or that which belongs to them by virtue of their freedom, as receiving inhabitants or laying out of lotts, etc."[2] This meant that only about one-sixth of the inhabitants of a town were allowed any voice in matters for the carrying out of which all the inhabitants were taxed. The building of the church, the maintenance of the same, the election and institution of the minister, were in the hands of the few, yet for all these the many paid their proportion. No matter how many inhabitants a town contained, unless there were ten freemen among them, they were allowed no representation at the General Court.[3] It is by such a contrast that we appreciate the full meaning of the liberal attitude of Connecticut for the first twenty years of her history.

To what, then, are we to ascribe the narrowing of the political boundaries which took place in 1657? It has been said that there was an infusion of an inharmonious element at this time into the colony, evidently referring to the Quakers. These people appeared in Boston first in 1652. Their numbers were very small, and strenuous efforts were made to keep them out. Their books were burned, themselves committed to prison, and shipmasters enjoined, on penalty of fine and imprisonment, not to bring any into the colonies. In Connecticut an unfortunate controversy in the church in Hartford caused the appearance of the Quakers to be viewed with alarm. The General Court eagerly followed the recommenda-

[1] Col. Rec. I, p. 139.
[2] Mass. Col. Rec. I, p. 161.
[3] Mass. Col. Rec. I, p. 178.

tion of the United Commissioners and passed a law against them two weeks before the Massachusetts court convened.[1] But there is not the slightest evidence that there had yet come a Quaker into Connecticut; the dread of them was enough. The colonial magistrates scented Quakerism from afar and passed laws as stringent as if this "cursed set of haeriticks" were already as thick as tramps in the colony. Even in New Haven, more easily reached by Quakers escaping from Massachusetts, there was a minimum of cases tried under the law.[2] If any Quakers reached Connecticut they passed unnoticed by the towns, though the records notice the presence of Jews. It does not seem possible, then, to ascribe to this cause the passage of the law in 1657 limiting the suffrage. This law defined admitted inhabitants, mentioned in the seventh Fundamental, that is the freemen, as "householders that are one and twenty years old or have bore office or have 30 l. estate." This meant, interpreted, that no unmarried man in the colony could vote for governor, magistrates or deputies unless he had himself held office or was possessed of real estate of thirty pounds value—a large sum in those days when rateable estate averaged about sixty pounds to each inhabitant.[3] But this law has nothing to do with the persons to be admitted into the various towns as inhabitants; it only declared that hereafter admission into the various towns as inhabitants was not a sufficient qualification for a freeman. The colony was losing faith in its towns. As before said, in connection with the proprietors,[4] the meetings were in the control of those who were admitting such as were not of honest conversation and, in the eyes of the court, acceptable as freemen. The cause of this is not far to seek. The first generation were passing away; the fathers were giving way to the children. The narrow circle within

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[1] Col. Rec. I, pp. 283, 303, 308. Mass. Col. Rec. IV, Part I, pp. 277, 278.
[2] Levermore, New Haven, pp. 135–6.
[3] Col. Rec. I, p. 293. Bronson, Early Government, p. 315.
[4] *Supra*, pp. 52–3.

which the former were willing to grant the exercise of pure democratic principles was broadening under the more catholic views of the new generation, and men of many sorts seem to have been admitted, or to have established themselves without the knowledge of the town authorities. If the dying out of the old spirit ushered in an era of religious change, as seen in the Hartford controversy, it also marks an era of political change, as seen in the law limiting the suffrage. It makes a small show on the statute book, but it is a sure index to the looseness of system which had grown up in the various towns. But if the children and those whom they admitted controlled in the towns, the fathers were in ascendency at the court, and the limitation law was the result. Yet not even this law was stringent enough. In the lists of 135 inhabitants made freemen within the ensuing two years, are to be seen, mingled with the names familiar to the student of the earlier period, many entirely new to the colony. This number was too great—considerably more than half of all admitted in twenty-three years under the constitution,[1]—and the court changed the thirty pounds real estate to thirty pounds personal estate.[2] On this account but three new freemen were created during the next three years and a half before the receipt of the charter. This action of the court apparently aroused the towns to a realization of their position, and Windsor passed an order regulating the admission of inhabitants in June, 1659, and Hartford followed with a forcible protest against intruding strangers the February following, in which it is declared that no one was to be admitted an inhabitant "without it be first consented to by the *orderly* vote of the inhabitants."[3] The word which we

[1] Bronson, Early Government, p. 315.

[2] Col. Rec. I, p. 331.

[3] No abstract of these votes could be so graphic as the votes themselves. "The townsmen took into consideration how to prevent inconvenience and damage that may come to the town if some order be not established about entertainment and admitting of persons to be inhabitant in the town.

have italicized is the key to an explanation of what had been the condition of the meetings before, and helps to substantiate the position already taken regarding a growing looseness in the town system. The machinery for admission had not been successful under the constitution; it had caused much trouble, and the cause seems to have been organic. With church and state practically interwoven, the theory of the one was too narrow, and of the other too broad. The throes of the controversial period had this result. By the Half Way Covenant the lines of church theory were extended; by the restrictions upon the right to vote, the lines of the theory of state were contracted; and these two great factors, democracy and church membership, no longer so unequally yoked, and made more harmonious by that liberal guide for action, the charter, ceased to struggle for the supremacy; neither was destined to swallow the other.

With the narrowing of the elective franchise,[1] the right was

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We therefore order that no person or persons whatsoever shall be admitted inhabitant in this town of Windsor without the approbation of the town or townsmen that are or shall be from year to year in being. Nor shall any man sett or sell any house or land so as to bring in any to be inhabitant into the town without the approbation of the townsmen, or giving in such security as may be accepted to save the town from damage." (Wind. Rec., June 27, 1659, vol. I, p. 40.) Stiles gives the year wrongly, 1658 (p. 54). The Hartford record is as follows: "for the preventing future evils and inconveniences that many times are ready to break in upon us, by many persons ushering in themselves among us who are strangers to us, through whose poverty, evil manners or opinions, the town is subject to be much prejudiced or endangered. It is therefore ordered at the same town meeting that no person or persons in Hartford, shall give any part of his or their house to him or them whereby he or they become an inmate, without it be first consented to by the orderly vote of the inhabitants at the same town meeting, under the forfeiture of five pounds for every month, to be recovered by the townsmen in being by a course of law." (Hart. Rec., Feb. 14, 1659 (1660 N. S.).

[1] It is not our purpose to trace further the history of popular suffrage. With the coming of the charter a law was passed which, as it practically remained the law till 1818, is worth quoting: "This Assembly doth order that for the future such as desire to be admitted freemen of this corpora-

taken away from a number of inhabitants of voting for colonial officers. Every freeman was an inhabitant, but not every inhabitant a freeman. For the former the only qualification was that he be of honest and peaceable conversation and accepted by the major part of the town. In 1682 the court passed a law forbidding persons of "ungovernable conversation," who pretended to be hired servants, or who pretended to hire houses and lands, and who would be likely to prove vicious, burdensome and chargeable to the town, from remaining there. Wethersfield, acting upon this, at once warned four men out of town. The towns frequently declared certain persons "no inhabitants," and in general carried out the provisions of the law with celerity.

Within the circle of inhabitants were the householders, who, as the name implies, were probably heads of families, or owners of a sufficient amount of real estate. A study of the list of those who received in the division of 1670[1] shows that eight were probably not freemen, and five were women.[2] Of course this gives us no positive clue to the position of a householder, but it shows that in the Connecticut colony one need not be a freeman and might be a woman. The simplest

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tion shall present themselves with a certificate under the hands of the major part of the Townsmen where they live, that they are persons of civil, peaceable and honest conversation and that they have attained the age of twenty-one years and have 20 l. estate, besides their person in the list of estate; and that such persons so qualified to the court's approbation shall be presented at October court yearly or some adjourned court and admitted after the election at the Assembly in May. And in case any freeman shall walk scandalously or commit any scandalous offence and be legally convicted thereof, he shall be disfranchised by any of our civil courts." Col. Rec. I, p. 389.

[1] See p. 56.

[2] The seventy-six names in the Wethersfield Records, compared with the list of freemen of 1669 (Col. Rec. II, p. 518), leaves twenty names unaccounted for. Two of these are found in the Hartford lists. Eight more were propounded in May, 1669, and accepted in October, 1669. Two others, propounded in May, 1670, were accepted in October, 1670. The division did not take place until the February following. This leaves only eight unaccounted for, of which the recorded admission of two with similar names makes further reduction to six possible.

definition of a householder is the head—male or female—of a household.

The position of the proprietors has already been practically discussed. They probably formed a small circle of men within the larger circle of householders and inhabitants, composing, as has been well said, a land community as distinct from the political community.[1] A proprietor was not of necessity, however, resident, though in the majority of cases he was so. In origin they were a body of men who collectively purchased lands of the natives, through grant of the General Court or otherwise. The right of each in the purchased land could be sold, exchanged, or left by will. Generally on removal such rights were sold to new-comers, who thus became proprietors, or some one of the inhabitants by such purchase added to his own rights. Often they were retained and looked upon as stock in a corporation.[2] This naturally led to the existence of proprie-

[1] Egleston's Land System, p. 581.

[2] We find records of the conveyances of title in the common lands of a town from one person to another. Such right and title was valued according to the number of pounds annexed to the name of the proprietor in a certain list at the time of division. This number of pounds right was proportioned to the amount which the person had given in original payment for the lands. To show how such rights passed from hand to hand we have record as follows: "Edward Ball and James Post of Saybrook convey all their right, title and interest in the common and undivided land of Hartford to Samuel Talcott, Samuel Flagg and Daniel Edwards, being the right of Stephen Post, formerly of Hartford, dec^{d}, whose name appears in the list of Proprietors in 1671 with a £24 right" (Hart. Book of Distr., p. 149). Such a right was divisible and could be sold in parts to different persons, and when laid out, was not so done all at once. The above list is found in Book of Distr. p. 581, with each proportion in pounds, highest £160, lowest £6. The division was generally acre for pound. The rights are spoken of as £24 right, £10 right, etc., and half and quarter rights are mentioned where a man purchased part of the right of another. This quotation shows the workings of the system: "Laid out to Thomas Sandford, one of the legal heirs of Jeremy Adams, one of the ancient proprietors of the sum of £15, which is what remains of said Adams' right to be laid out, and also £5. 6. 10. in the right of Robert Sandford under Hale, which is all that remains to be laid out in said right." (Hart. Land Records, 18, p. 477.)

tors holding rights in one town and living in another, or even out of the colony, and troubles frequently arose. It was a claim of this kind which gave rise to a vexatious suit, lasting three years, of an inhabitant of Hartford, for one hundred acres of land in Wethersfield, he basing his claim on his right in the division of 1693, as received from his father-in-law. The neglected proprietor won his case.[1] The proprietors, as such, had no political rights. It was only in their capacity as admitted inhabitants that they voted in town meeting.

Thus we have seen that the people composing a town in the Connecticut colony were made up of inhabitants, householders, proprietors, and freemen, no one class entirely excluding another, while the majority of adult males could undoubtedly lay claim to all four titles. The right to vote in town meeting and to hold town office at first was the privilege of any one admitted by the town. But as time went on it is evident that the same looseness of system which led to the limitation of the general suffrage was to have its effect on the towns themselves. The "honest conversation" clause had to be repeated by the court, and the votes already recorded explain the action of two of the towns in 1659. Wethersfield has a very caustic protest of a later date from twenty-eight inhabitants, and possibly proprietors, which speaks of the "cunning contrivances and insinuations which men are studious to doe . . . voating in town meetings when the inhabitants have many of them been withdrawn, and because there is not enuff present to countermand their proceedings," etc.[2] So we may be sure that there was some ground for the passage by the court of a law restricting the

[1] Mr. Hooker's suit was a matter of great concern to the town. Fearing to lose the land, the town even empowered the selectmen, in case the suit went against them, to "address her Majestie by petition, praying her Majestie take notice in this case, and do as in her wisdom her Majestie shall see meet, whereby justice may be done." Weth. Rec., Oct. 4, 1708; July 8, 1710; Dec. 18, 1710; April 24, 1711; August 30, 1711.

[2] Weth. Rec., Jan. 28, 1697.

right of voting in town meetings. In 1679 the court decreed that because there were a "number of sourjourners or inmates that do take it upon themselves to deal, vote or intermeddle with public occasions of the town or place where they live," therefore no one except an admitted inhabitant, a householder and a man of sober conversation, who has at least fifty shillings freehold estate, could vote for town or country officers or for grants of rates or lands.[1] The towns take no notice of this order, and if it was carried out, as was probably the case, it was practically the first limitation on the right of voting in regular town meeting. The towns clung to their democratic principles longer than did the colony.

Growth of the Official System.

There seems to be a good deal of misapprehension, particularly among those to whom the early history of the colony in its detail is not familiar, regarding the exact nature of the settlement. It has been conceived of as the bodily transportation of three organized towns, as if the emigrants migrated like an army completely officered. It is true that nearly all[2] the settlers came from three Massachusetts towns, but they by no means came all at once. Two of the bodies came as organized churches, but this was after the three centres of settlement had been occupied by previous planters, and after they had become towns in the eyes of the law by the act of the provisional government, based on the decree of the Massachusetts court the year before.[3] Mr. Hooker did not arrive until the June following. Mr. Warham had probably but just arrived with the greater part of the Dorchester people,

[1] Col. Rec. III, p. 84. Although this is practically the first limitation of town suffrage, there was, however, an early order passed to this effect, "if any person . . . have been or shall be fined or whippen for any scandalous offense he shall not be admitted after such tyme to have ahy voate in Towne or Commonwealth . . . until the court manifest their satisfaction." (Col. Rec. I, p. 138.)

[2] "Members of Newe Towne, Dorchest', Waterton and other places." (Mass. Col. Rec. I, pp. 170, 171.)

[3] Mass. Col. Rec. I, p. 160.

and the Wethersfield church was organized at the same meeting of the court. Massachusetts evidently looked upon the settlement as one plantation, for she appointed for it but one constable. It was one plantation, but the conditions of settlement allowed its ready separation into three distinct towns, through the powers vested in the commissioners. But it is almost misleading to call them towns even now, for practically they were three plantations organized on a military basis. The constable at first was a military officer. The equipment was the drakes—one for each town—granted by the Massachusetts court the year before.[1] This step was the beginning of recognition of the triple nature of the settlement. First the towns had a military organization, then a religious organization, and last of all, an act that was not completed until the passage of the orders of 1639, an independent civil organization. For two years and a half it is extremely probable that the only civil officers were the constable, whose position was semi-military, the collectors, appointed by the court to gather the rates, the commissioners, afterwards the assistants, and the committees of the General Court who resided in the separate towns. The inhabitants must have met "in some Publike Assembly,"[2] for their consent was necessary in certain orders, and they elected committees to the court of 1637. The use of this term inclines us to the opinion that all strictly town matters were at first conducted by committees appointed in a meeting of the whole, and that by 1638–39 one such committee, the townsmen, had become official in its character and was annually elected. The fact that the Hartford records for the first three years were merely notes regarding land, precautions to prevent the spread of fire, provision for guard at every public meeting, and the appointment of a man to keep the bridge in repair and to do work on the highways, would seem to show that there was hardly a settled organization. These notes were undoubtedly either entered

[1] Mass. Col. Rec. I, p. 184.

[2] Conn. Col. Rec. I, p. 23.

in the book at a later day when a recorder was appointed, or transferred from jottings made at the time of the adoption of these rules.

With the beginning of the year 1639 (January 1, 1638, O. S.) we find the first mention of town officers. Hartford elected at that time four townsmen, and accompanying the record of election is an elaboration of their duties. The careful manner in which the latter is drawn up seems to point to a first election and to the fact that the towns were just beginning to get into form. This properly begins the official system, and for the present we must depend on the Hartford records, as those of the other towns are not extant. The principle of official limitation is present, so honestly maintained by Hooker in his well known sermon, and every act of these officials was watched by the people whose will they were chosen to execute.[1] The widening of this system consisted in the extension of these duties by town or court, the development of new powers, and the differentiation of these powers by the creation of new officers. The duties of the townsmen were soon extended. They were constituted into a court for petty cases of debt and trespass (for which, however, a separate body might be chosen if the town wished); they supervised estates of deceased persons; they took inventories and copies of wills, and performed additional supervisory duties. The first probable distribution of their powers was when a recorder was appointed. All orders previous to

[1] The orders of Oct. 10, 1639, first put into shape the powers that the towns were to enjoy. That they already possessed the privileges therein contained, as Prof. Johnston maintains (Connecticut, p. 76), is without warrant and as a statement is indefensible. We prefer to consider the incorporation of the town to have taken place at the time of the appointing of a constable, and the orders to be the completion of the act by the General Court. It is hardly probable that Prof. Johnston has examined the town records, or he would not have been misled into making an entirely wrong interpretation of the magisterial board, "the really new point in the 'orders,'" which, though truly a new point, was not the origin of the "executive board of the towns, known as 'selectmen.'"

this were jotted down either by the townsmen or by the committee chosen to order the affairs of the town. This officer was elected in Hartford shortly after the passage of the above orders of the court, and at the same time the town voted that a chosen committee should "also inquire what orders stand in force which are [of] general concernment which are not recorded."[1] Undoubtedly such orders had been made without system, were not minutes of meetings, but partook of the nature of memoranda of matters decided upon in some public gathering or in a sort of committee of the whole. About the same time Hartford, following out the court order allowing the towns to choose their own officers, elected two constables for presentation to the court. At this meeting one finds a very interesting differentiation of the townsmen's duties and gradual beginning of a more extensive official system. In December, 1639, the town gave the townsmen liberty of appointing two men (one for each *side*), who were to "attend them in such things as they appoint about the town affairs and be paid at a publicque charge."[2] The townsmen do not appear to have chosen these men, for they were elected by the whole town at its next meeting. At that time their duties were elaborated. These two men as assistants to the townsmen were to perform many of those duties which afterwards, little by little, were to fall to the lot of specially elected officers. The record says that these men were chosen to assist the townsmen, but their principal duties were as follows: to view the fence about the common fields when requested by the townsmen; for this they were to have three pence an hour, and four pence an hour if they were obliged to spend time in repairing. This was to be paid by the owners of the broken palings. They were to survey the common fields, when appointed, with recompense of three pence an hour. If any stray cattle or swine were taken, then they were "to do their best to bring them to the pound, either

[1] Hart. Rec., Dec. 26, 1639.

[2] Hart. Rec., Dec. 23, 1639.

by themselves or any help they shall need," for which work they were to receive pay, with so much additional for every animal pounded. This was made a general duty to be performed without command from the townsmen, whenever there was need. In addition they were to do any other special public service, such as "to warn men to publick employment or to gather some particular rates or the like," for which they were to receive the usual recompense of three pence per hour.[1] Here we have in embryo the fence-viewer, pinder or haward, the public warner, and the rate collector. Just before this outlining of duties there had been surveyors appointed, who as their first duty had supervision of the highways. Thus in 1640 the governing body of the town consisted of two constables, four townsmen, two surveyors, and a committee of two, whose duties, partially defined, embraced such as were not performed by the others. Of these functionaries the constable and townsmen were permanent and received annual election, the surveyors were yet little more than a committee appointed for an indefinite period, with specific duties, and the body of two was but a temporary expedient, the resolution of which into fixed officers was only a matter of time.

Three stages of growth were yet to take place: a greater distribution of labor, a definite period of service, and a gradual adding of new duties such as the growth of the town demanded. Up to 1640 the simple concerns of the town of Hartford required no further oversight than that which could be given by these few officers, by an occasionally appointed committee to perform duties of a sporadic nature, and by the town as a whole. At this time the question of highways and fences comes into more or less prominence, and special committees were appointed to lay out new highways and to order the proportions of fencing. This seems to crystallize the surveyor of highways into a regular officer, and he was from this time annually elected. No additions were made to this list until

[1] Hart. Rec., pp. 1, 7.

in 1643 chimney-viewers were elected. The town had established in 1635 the requirement that every house have its ladder or tree for use in case of fire, and probably the watch under the control of the constable saw that this was carried out. The chimney-viewers were at first scarcely more than a committee elected to serve till others superseded them, for new chimney-viewers were not chosen for two years. After 1645, however, they became annual officers. In the year 1643 the court ordered the towns to choose seven men (afterwards reduced to five) to give the common lands their "serious and sadde consideration."[1] Hartford in response elected five men "to survey the Commons and fences and to appoint according to order [*i. e.* of the court] in that case." The next year this body was apparently elected under the title of fence-viewers; at least five are elected who are so called, with no mention of any other court committee. Then, again following the order of the court, the town the next year, 1651, handed over these duties to the townsmen, with the addition of one outside member.[2] This step very naturally led to the next, which consisted in relieving the townsmen altogether of these duties and constituting this extra member of the board official fence-viewer. Two were hereafter elected (as required by the two *sides*), who served often two or three years in succession, and were paid out of the fines they gathered. After 1666 they were annually chosen and became established officials. No other officers were chosen before 1651. When the records of Wethersfield and Windsor usher the condition of those towns into view in 1646 and 1650, respectively, we find only

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[1] Col. Rec. I, p. 101.

[2] It is a little curious that the town order for the above is dated Feb. 4, 1650, while that of the court is Feb. 5, 1650. We suspect that in a great many cases, of which this is not the first evidence, the relation between the town and court in Hartford was much closer than in the other towns. Hartford seems to have been made a kind of experimental station before the issuance of court orders regarding towns. This would account for the backwardness of the official systems of Windsor and Wethersfield.

townsmen performing the will of the people. Though a great deal is said about fences, highways, animals, and rates, yet no mention is made of specially appointed officers to take charge of these matters. All was apparently done by the townsmen, with the committees which were occasionally appointed to assist them. We know that early in Hartford the townsmen were given control of all matters except land grants, the admission of new inhabitants, and the levying of taxes, the control of which matters was retained by the town. It is probable that in Wethersfield and Windsor this system obtained to 1651. But with the adoption of the code of 1650, and the promulgation of a definite law ordering the appointment by the towns of certain officers, the latter began to elaborate their system. Hereafter each town elected regularly townsmen, constables, and surveyors. Windsor added chimney-viewers, fence-viewers, and way-wardens in 1654. These Hartford had already elected, but Wethersfield did not elect chimney-viewers till the next century (1708), nor fence-viewers until 1665, and then not annually until 1669. The Wethersfield townsmen were a very important body; they at first chose even the surveyors, and when in 1656 the town took the election of these officers into its own hands, they continued to choose, when needed, the pinders—whose duties were later merged in those of haward—perambulators,[1] and

[1] *Perambulation.*—The ancient right of perambulation, or going the bounds, was in full operation in the Connecticut colony. The custom dates back very far in history, and was, in early Saxon times, attended with considerable ceremonial. The bounds of manors, and later of parishes, were fixed by trees, heaps of stones and natural marks, and the perambulation of half the parishioners from mark to mark was made yearly for the purpose of resetting the bounds if destroyed, or of reaffirming them and seeing that no encroachments had taken place. The Connecticut settlers were familiar with the old custom and early applied it, but in a less pretentious fashion than that which existed in the mother country. "When their bounds are once set out, once in the year three or more persons in the town appointed by the selectmen shall appoint with the adjacent towns to goe the bounds betwixt their said towns and renew their marks." (Col. Rec. I, p. 513.)

warners to town meeting, though these were not elected every year, and they appointed many important committees. In Windsor the town elected these men as was the case in Hart-

The boundaries of each town were very early settled at the time the towns were named. They are rudely described, and it is no wonder that town jealousies found opportunity to dispute them. The landmarks were at first the mouths of three brooks, a tree and a pale, with east, west and south measurements by miles. (Col. Rec. I, pp. 7, 8.) This gave to each of the townships the form of a parallelogram. It is doubtful whether anything was done in addition to establishing these bounds before the passage of the code of 1650. In that document it was ordered that each town was to set out its bounds within a year, in order to avoid "jealousies of persons, trouble in towns and incumbrances in courts"; the town records show that this was carefully complied with. The proper maintenance of town boundaries has been called the symbol of free institutions, as it is the assertion on the part of the town of independence and self-respect, and the frequency of the disputes is evidence that the river towns were no shiftless upholders of their rights. Wethersfield at one time even threatened to sue the whole town of Hartford if the latter refused to send her committee to settle a disputed point (Weth. Rec., Sept. 30, 1695), and two years later actually entered on a suit; while with her neighbor on the west she was in dispute for forty years. It does not appear that in England it was the custom for parishes to join in the perambulation, but each beat its own bounds. Yet the theory of the English perambulation was carried out in Windsor, of as many as possible joining in the bound-beating. "Also men desired and appointed to run the lyne between Windsor and Hartford on the east side of the Great River from the mouth of Podang according as it was anciently run betwixt us on the west side. Mr. Newbery, Matthew Grant, John Fitch to carry an axe and a spade, and others as many as can and will" (Wind. Rec., Mar. 26, 1660), "and as many as will besides." (Mar. 11, 1668.) Each town appointed a committee, one of whom was ordered to give the other towns warning. This committee, of from two to six men, to which was occasionally added the townsmen, would meet the committee from the neighboring town on the dividing line. The joint body then advanced from mark to mark, digging ditches, heaping stones, or marking trees if necessary. This repeated every year ought to have kept the matter from dispute, and in general we may say that it did. (Weth. Rec., Mar. 8, 1658–4; Apr. 2, 1655; Mar. 24, 1658–9, etc.) Without making too much of a survival, it is interesting to note a shadow of the old English ceremonial. In the records of Windsor, liquors for bound-goers occurs year after year as a regular town expense (compare this with an entry in the account book of Cheshire, England, 1670, "spent at perambulation dinner, 3.10," Toulmin Smith, p. 522).

ford, and as they were not restrained by any general order, the nature of the officers differed somewhat both as to duties and date of first election.

Yet the perambulaters received pay in addition. (Wind. Rec., Feb. 14, 1654; Feb. 16, 1665; Stiles, Windsor, pp. 61, 161.) From the value of the liquor used, from two to six shillings, and from its character and the amount needed—a quart of rum, two gallons of cider—it is likely that another survival is to be chronicled; the Saxon stopped at each bound mark and performed a little ceremony, probably the Windsor fathers did the same in a somewhat different manner. But Wethersfield was not so lavish as her sister town, she allowed no such heathenish survival. Not one mention is anywhere made in her records of liquor for bound-goers; she ordered that her bounds "be Rund" according to court order, but that which under some circumstances would make them run more smoothly was wanting.

There must be noticed a difference in the custom as applied here from that known in England. There the idea was that careful perambulation must be made by the parish, that no sharp practice on the part of a neighbor parish should deprive it of any rightful territory. To this end a large number of the inhabitants, old and young, passed over the bounds until the entire parish had been circumperambulated. This was done independently of any adjoining town. But in Connecticut a distinct perambulation was made with each committee from the adjacent towns, covering each time only the extent of line bounding the two towns concerned. In Virginia, where the custom, under the title "processioning" or "going round," was early in vogue, the method was more like the English perambulation. Each Virginia parish was divided into precincts, around which processioning was performed once in four years. On a stated day between September and March, two freeholders were appointed to lead the procession and to make return to the vestry by means of registry books. They were accompanied by the "neighbors" or all freeholders in the precinct, who were obliged to be present and follow. When the boundaries had been three times processioned they became unalterably fixed. It was generally the custom for neighboring precincts to perform their perambulation at the same time. (Hening's Statutes, II, p. 102; III, pp. 32, 325–8, 529–31.) The custom did not appear in New Haven until 1683. (Levermore, p. 170.) In Massachusetts it was established by court order in 1647, and of that order the Connecticut law is an almost verbatim copy. (Mass. Col. Rec. II, p. 210.) The custom as enforced in the Plymouth colony contained the same general provisions about time, place and manner. (Plymouth Laws, p. 259.) Rhode Island, Pennsylvania, and Maryland went no further than to pass laws against the removal or alteration of boundary marks.

In nearly every case save that of townsmen, town officers were the result of an order of the court to that effect. Hartford was generally the first to respond—for it was the seat of government—to the decree of the higher power, and the other towns followed sometimes at once, often within reasonable time, though again apparently they neglected it altogether. The court had already ordered the establishment of the constable, the watch, surveyors, recorder, and fence-viewer; yet as late as 1668 it declared that adequate provision had not been made for the establishment of town officers, and passed a general law enacting a penalty in case of refusal to accept office.[1] This referred only to townsmen, constables, and surveyors, and had the effect of making the town service more efficient.

With the increase in the number of inhabitants and in the wealth of the communities, special officers to regulate the finances were necessary, and collectors of rates were early appointed by the court.[2] There were at first three rates and afterwards a fourth. When a plantation became a town it first bore its share of the country rate, which was the amount paid by each town to the colony, which was collected and transmitted by the constable; then there was the town rate, established by the town at each meeting, and paid for according to the list of estate by each inhabitant; there was also the minister's rate, levied and collected as was the town rate, and afterward there became established a school rate. The officers for the management of these rates were the lister, who made up the list of estate, and his associate, who made out the rate; the collector or bailiff, to whom the inhabitants brought their wheat, pease and "marchantable" Indian corn; and the inspector, a short-lived officer, who was to see that no estate was left out of the country list. Often the minister's and the town rate were collected by the same person, sometimes by different persons, and the townsmen had full power to call the collectors to account every year.

[1] Col. Rec. II, p. 87.

[2] Col. Rec. I, pp. 12, 113.

In addition to these officers there were a series of others ordered to be appointed by the court and called into being by the commercial activity of the settlement. We find intermittently elected such officers as the packer of meat, brander of horses, with his brand book and iron, sealer of leather, with his stamp, and examiner of yarn, each of whom took his oath before the magistrate—the assistant or commissioner—and received as pay the fees of his office. Then there was also the sealer of weights and measures, the standard of which was originally procured from England; sometimes the court appointed these latter officers, but more often the town elected them. By way of special functionaries there were the public whippers, the cattle herders, sheep masters, tithingmen, ordinary-keepers, and, of the military organization, the ensign of the train band. In the year 1708 the following was the list of officers chosen in Wethersfield: town clerk, selectmen, constables, collectors for the minister's and town rate, surveyors (two for the center, one for Rocky Hill, and one for West Farms), fence-viewers (two for the center, two for Rocky Hill), listers, sealer of measures, leather sealer, chimney-viewers, hawards, and committee for the school. The office of town-warner and town-crier had for some time been obsolete, for the court ordered the erection of a sign-post in 1682.

For the satisfaction of justice there was ample provision. As early as 1639 the townsmen had been authorized to sit as a court for the trial of cases involving less than forty shillings. Cases of debt, of trespass, little matters of dispute between inhabitants, with damages paid in Indian corn or rye, are to be found in the Windsor records. It is probable that the other towns had the same court, though there is no record of it, for the Particular Court of the colony had no trials for less than forty shillings. This was superseded in 1665 by the commissioner, to whom was given "magistratical" power. To aid him and to preserve the number of the former town court, Wethersfield twice, in 1666 and 1667,

elected a body which she called "selectmen," but after that evidently the commissioner acted alone. In 1669 a court was ordered to be erected in the towns, consisting of the commissioner, assisted by two of the townsmen; these three acting with the assistant formed a court of dignity, more worthy to inspire respect and moderation on the part of offenders. It was, however, short-lived, and though Windsor has record of it in 1669, we hear nothing more of it. The judicial duties now devolved entirely on the commissioner, until he was superseded in January, 1698, by the Justice of the Peace. Appeal to the Particular Court, and later to the County Court, was allowed, but not encouraged.

Lawyers as we understand them were not in existence. But many a man in the colony had the requisite qualifications, with perhaps a smattering (or more, as in the case of Roger Ludlow) of law, and he only required to be clothed with legal power to bring or resist a suit. This authority was conveyed by letter of attorney, which was a document signed by the plaintiff or defendant and duly witnessed. Such a letter would be given to one person or more, and when a town wished to bring suit it empowered the townsmen to plead and manage the case themselves, or instructed them to constitute others as attorneys acting under them, to whom they were to give letters of attorney.[1] Debts were collected in the same way.[2] Sometimes in more personal cases arbitration was resorted to, in which case two (and if they could not agree, three) would be chosen, and a bond of so many pounds put up, which was forfeited by him who failed to abide by the judgment of the arbitrators.[3] Committees were appointed for the same purpose for a limited time to hear cases of complaint, to be reported to the town, who reserved the right to pass judgment.[4]

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[1] Hart. Rec., May 13, 1678; Weth. Rec., Dec. 17, 1762.
[2] Hart. Book of Distrib., p. 544.
[3] Weth. Land Rec. III, p. 3; Stiles, Windsor, p. 65.
[4] For a very interesting case of this kind see Weth. Rec., Mar. 4, 1701–2.

Townsmen.

After this bird's-eye view of the town official system, an examination into the constitution and growth of the most important body of all, the executive board of townsmen, will give us an idea of the practical working of the town machinery. The first appearance of this body in the Hartford records of January 1, 1638 (1639), shows it to us in no process of development, as was the case elsewhere,[1] but full grown, with qualified powers, undoubtedly the result of previous experimentation. At a meeting held January 1, 1638–39, two weeks before the "11 orders" were voted, it was ordered that the townsmen for the time being should have the power of the whole to order the common occasions of the town, with, however, considerable limitation. They were to receive no new inhabitant without the approbation of the whole; could make no levies on the town except in matters concerning the herding of cattle; could grant no lands save in small parcels of an acre or two to a necessitous inhabitant; could not alter any highway already settled and laid out; in the calling out of persons and cattle for labor they must guarantee in the name of the whole the safe return of the cattle and a reasonable wage to the men, and should not raise wages above six pence per day. They were required to meet at least once a fortnight, for the consideration of affairs, and for arranging the proper time for the calling of a general meeting, and for absence from such meeting they were to be fined two shillings six pence for every offense.[2] The next year it was voted that once a month the townsmen should hold an open meeting, to which any inhabitant might come, if he had any business, at 9 o'clock in the morning of the first Thursday in the month; and that no order as passed in

[1] The townsmen of Dorchester, Mass., furnish a good example of such a development. Dorchester Rec. pp. 3, 7; in 4th Report of Boston Record Commission.

[2] Hart. Rec., Jan. 1, 1638.

the townsmen's meeting was to be valid until it had either been published at some general meeting or reported to the inhabitants house by house, or read after the lecture. If any one, on being warned, failed to stay to listen to the order, he could not plead ignorance of the law, but was liable for its breach.[1] The type of townsmen in 1638–39 was little different from that found in later years.[2]

The value of such a system would seem to be patent to every one, but it is specially interesting to find the colonists' own reasons, expressed a few years later, as to the principles on which the functions of townsmen were based. In 1645 the town (Hartford) voted that persons refusing to respond when called out by the townsmen to work on the highways should be fined. Evidently an unrecorded protest was made against giving the townsmen so much power, for on the next page appears a study of principles which is worthy, in its relation to the town, to stand beside Hooker's sermon in its relation to the commonwealth. The "Explication" reads thus:

"Whereas in all comunities & bodyes of people some publique workes will ocurr for the orderinge & manageing whereof yt hath ever beene found necessary & agreeable to the rules of prudence to make choice of p'ticular p'sons to whome the same hath been comitted whoe both with most advantage to the occations & least trouble & inconvenience to the whole may oversee & transact such affayres: And

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[1] Hart. Rec., Jan. 7, 1639.

[2] The error often made regarding the origin of the Connecticut townsmen, ascribing the beginning of the townsmen system to the magisterial board or town court instituted by the General Court in October, 1639, seems to be due to the indexing of this board in the printed records of the colony under the heading "Townsmen." Dr. Levermore, in his Republic of New Haven, p. 72, note, as well as Prof. Johnston (*supra*, p. 94, note), falls into the error. As we have seen, the decree of the court had nothing to do with the establishment of even prospective townsmen, for they already existed, with functions almost identical with those performed by the townsmen of the later period.

accordingly yt is w^th^ us usuall (the beginnings in w^ch^ we are p'senting many things of that natuer) to make choise of some men yearly whome we call Townesmen to attend such occations. But yt is easily obvious to evry apprehension that unles w^th^ the choise of y^m^ to the place power be given for the manageing & carring on of the same their indeav^rs^ wilbee fruitless & the publique nessesarily suffer; It is therefore by general consent ordered that in all occations that doe concerne the whole and is comitted to the care & oversight of the townesmen yt shal bee lawfull for them or anie twoe of them to call out the teames or p'sons of anie of the inhabitants, the magistratts & officers of the church in their owne persons only excepted for the mannaging & carringe on of such occations wherin yet they are to use the best of their descretion not to lay such burthens on anie as to destroy the p'ticular but soe farr as the natuer of the occation under hand will in their judgments w^th^out disadvantage p'mitt to attend as neare as may be a p'portion according to the interest ech hath in the whole."[1] In this declaration is contained the fundamental idea of town government: the election by the body of those who are to order its affairs, the investing these when elected with power for the proper performance of their duties, and the implied responsibility in the use of this power. There lies in the latter factors all the difference between good representative government and bad representative government, between the Constitution and the Articles of Confederation. It is an outcropping of the spirit which framed the Fundamental Articles. A clause which follows the above vote declares that if any partiality be shown by the townsmen, the aggrieved person might appeal to the whole town, or if not then receiving satisfaction, might carry his case to the "publique justice in the place," thus making the law a court of higher appeal than the people.

The number of men for this purpose chosen has differed

[1] Hart. Rec. I, p. 37.

greatly in different colonies and towns. In Massachusetts, bodies of twenty were elected to order affairs, of whom seven could bind the people.[1] In some towns twelve townsmen are recorded,[2] but as years went on a reduction took place, and we find the number gradually lessening to nine, seven, five, and three. In New Haven the number was ten, afterwards reduced to seven. In the Connecticut colony it varied. Hartford regularly had four; Wethersfield in seventy years elected twenty-six bodies of five, twenty-nine bodies of four, and fifteen bodies of three; the Windsor number was at first seven, afterwards five. The object for which they were elected has been already dwelt upon. The records generally phrase it "to order the town's occations for the year," "to agetat and order the townse occasions for the present year." These occasions were far more extensive than is now the case. Town affairs included church affairs, and in those three little communities great were the religious agitations. The more important matters, such as building the meeting-house, settling a minister or a controversy, were put into the hands of a special committee, but the townsmen cared for and repaired the meeting-house, and had charge of those chosen by town vote for sweeping, dressing, underdaubing and clapboarding the building, and generally saw to the construction of porch, seats, and pulpit. At that time much was passed upon by people in town-meeting which would now be decided by the selectmen at their own meeting, on the strength of the power vested in them by law. But there was then no law determining the exact nature of their office. Each town measured the proper limitations of its own townsmen, and one may say that the townsmen did everything for the performance of which no one else was appointed. Often these powers varied year by year. In carrying out their functions the townsmen often, though by no means always, wrote out the orders

[1] Blake, Annals of Dorchester, pp. 13, 14.
[2] Watertown and Boston.

already arranged in their own meeting, drawing them up in the proper form. These were presented at the general meeting, when they would be accepted or not as the inhabitants pleased, for the latter had always the power of vetoing the projects of their agents if they did not approve of them.

The modern town treasurer is an important differentiation of the townsmen's powers. This is not the place to speak of the nature of the rates or the method of raising them. Suffice it to say that the control of all expenditures, whether for church, town, or school matters, was in the hands of the townsmen. They never collected the rates. For this purpose a committee or special officer was chosen, but it was through the townsmen that the regular expenses of the town were met. Under such heading there seems to have been included such items as paying the herders, watch, drum-beaters, building and repairing bridges, setting the town mill, surveying lands, repairing the minister's house, payment of minister's salary, occasionally supporting indigent persons, repair of town property, as guns, ferry (in Windsor), town stocks, etc., payment of bounties for wolves and blackbirds, payment of town officers, and such extra expenses as "Townsmen dining with magistrates" and "liquor for boundgoers." Of course this is an imperfect list, yet it gives an idea of town expenditure in the last half of the seventeenth century. Every year the town voted a certain amount for the past year's expenses, and it is worthy of notice that difficulties over financial matters were not so frequent as we might have expected. Yet, though the townsmen were hard-headed economists, they do not always appear to have been systematic and prompt in squaring their accounts and handing over the surplus to the newly elected officers. There was no law, as now, requiring that an annual statement of receipts and expenditures be made and laid before the town at their annual meeting. It was customary to do so, but there was at times a curt independence about the old townsmen-treasurers which would not brook too close supervision. Their honesty placed

them above giving bonds, or obeying laws which seemed to question their honor.[1]

The townsmen gradually changed into the selectmen. This name does not appear in Hartford and Windsor before 1691, and from that time for a period of twenty-five years there is a curious commingling of the two terms. The title "selectmen" was often used in recording the election, but the town clerk still clung to the good old name, and we find "townsmen" in the minutes of further proceedings. But there is plenty of evidence to show that the terms were used synonymously. Wethersfield employed the term in a very confusing fashion. It first styled two town courts established in 1666 and 1667 "selectmen," and in 1679 and 1681 again used the term for a distinct body; it is evident, from the nature of the latter's duties, that they were connected with the granting and receiving of certificates of freemanship. The establishment of this body seems to have been the following out of an order of the court in 1678, in which selectmen giving false certificates were fined £5.[2] Wethersfield immediately elected for this purpose an extra body—first of four members, then of three—who performed this service, and because, from their position, they needed to have a familiarity with the list of estate, they were, in 1679, given the duties of listers and rate-makers. But in a few years the term had become confused with that of townsmen, and the fact that the name selectmen was already in use and further established by the laws of Andros in 1688, to which Wethersfield, at least, very duti-

[1] In seventy years in Wethersfield seventy-four men held the office of townsmen, with an average of four elections to each. Of these seventy-four, thirty held office over four times, with an average of six elections to each; fourteen held office over six times, with an average of eight elections to each; four held office over eight times, with an average of ten elections to each; and the most befunctionaried individual served as townsman eleven times, while only fifteen held office but once. (Weth. Rec. 1646–1716.)

[2] Col. Rec. III, p. 24.

fully responded,[1] brought it into common use, and after 1725 it was the commonly accepted term.

Constables.

The appointment of a constable in Connecticut was the affixing of the official seal to a town, and was done without exception, though in at least two instances (Simsbury and Derby) the court appointed the constable before the settlements petitioned for town privileges. He was the right arm of the law, and the channel through which the court communicated with the towns, and frequent were the orders to constables by the court.

The first constables appointed for the river towns were of a decidedly military character. They rather resembled their English prototype than the officer of later colonial days.[2] The first independent organization of the towns was for defense. The earliest act of the provisional government was directed against a laxity of military discipline, and the next forbade sale of arms, powder or shot to the Indians; following which is the appointment of constables, practically as military officers. A further extension of the armed organization is seen in the watch, undoubtedly a kind of constabulary patrol to guard against Indian attacks. The constable was next required to view the ammunition, which every inhabitant was ordered to have in readiness, and finally, before half a year had passed, each town was put into working military form by the institution of monthly trainings under the constable, with more frequent meetings for the "unskillful." At this time the constable was required to perform his time-honored duty of viewing the arms to see "whether they be serviceable or noe," which duty was later given to the clerk of the train band. One is not surprised that the colonists

[1] Weth. Rec., May 21, 1688.

[2] For the military character of the constable see Adams, Norman Constables in America. J. H. U. Studies, vol. I, pp. 8 ff.

were in readiness the next year to declare an offensive war against the Pequots.[1] After the war was over the inhabitants were ordered to bring to the constable "any Armor, gones, swords, belts, Bandilers, kittles, pottes, tooles or any thing else that belongs to the commonwealth," and this officer was to return them to the next court.[2]

But after this need of special military jurisdiction was passed and Captain Mason was appointed general training officer, the constable's duties became of a purely civil character. Such were first outlined in the code of 1650. But without reference to that code, his duties, as the records declare them, were as follows: He was obliged to take oath after his election by the town before a magistrate or assistant. He collected the country rate and transmitted it to the colonial collector, afterwards the treasurer (1708). He warned the freemen to attend their meeting when deputies were chosen, and, in Windsor at least, warned for one town meeting yearly. At this meeting he read to the inhabitants the "cuntry laws" or orders of the General Court passed during the preceding year, and declared to them the amount of the country rate. At this meeting his successors were chosen as well as other town officers. He controlled the watch and executed all commands of the court or warrants from a magistrate. He broke up tipplers, raised the hue and cry (of ancient lineage), and could summon other inhabitants to join in the pursuit. He also passed on objectionable personages to the constable of the next town, who continued the process until Sir Vagabond reached the town that owned him. This was one way of disposing of intruders. He was an officer that inspired awe. Yet notwithstanding this, the office was not one greatly sought after; its duties were arduous, and many a man preferred to pay his forty shilling fine than to serve.[3]

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[1] Col. Rec. I, pp. 1, 2, 3, 4, 9.

[2] Col. Rec. I, p. 12.

[3] Dr. Stiles, quoting a Windsor record of 1661, where "after much contending" constables were chosen, concludes that the office was in great

Besides this functionary, some of the towns had a kind of petty constable, who guarded the commons to prevent neighboring townspeople from carrying off timber, fire-wood, stone, etc. He was, however, a town officer, and his election does not appear to have been ordered by the court.

Town Meetings.

In comparing the records of the different towns and colonies, one is struck by the bareness, the brevity and narrowness in scope of the minutes of meetings of the Connecticut settlers. There is little doubt that what we have represents the gist of the proceedings, and not only does the subject-matter show us that questions of necessity alone were discussed, such as related to the existence of the town and church as a corporate body, but the record of such discussion is embraced in the simple statement of its result as embodied in a town order. There is little flesh on the bare skeleton of facts, little color to lighten up the sombre monotony. Here and there an unconscious bit of phraseology or an exceptionally lively subject naïvely treated by the recorder, gives a hint of the activity which lay behind the formal phrases, and a realistic peep into the life of the people. But any attempt to portray the daily social and business life of the people of the early colony would be a difficult task.

The town meeting was held at first monthly, but, with the growth of the town, the meetings during the summer months were held less frequently, and at times were apparently dropped altogether, except in case of special call. The autumn and winter meetings were of the greatest importance, for at these officers were elected, rates proclaimed and laws read. During the seventeenth century the different officers were not always elected at the same meeting, though such

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demand. It may have been at that time, but after 1675 it was not. Hartford and Wethersfield had plenty of cases of refusal and payment of fine. In 1691 seven men were elected one after the other, and each refused to take the office. (Weth. Rec., Dec. 28, 1691.)

was the case with the more important. The town-meeting was generally called together by the beating of the drum or blowing of the trumpet from the top of the meeting-house, in a manner made clear by the following: "determined that provision should be made upon the top of the meeting-house, from the Lanthorn to the ridge of the house, to walk conveniently to sound a trumpet or drum to give warning to meetings."[1] This was employed for all meetings, on Sundays and lecture days as well. There were also warners, who went from house to house in Wethersfield, giving notice to the inhabitants. These inhabitants generally came together at 9 in the morning, and at first fines were imposed for absence, but this seems to have fallen into disuse. When the inhabitants were assembled, a moderator was appointed and business begun. The nature of the orders passed upon will have been gathered from what has already been said, and it is unnecessary to enlarge upon it here. There was no interference with private concerns, no sumptuary legislation, no votes touching on the morals or religious opinions of the people. What little of this sort was to be done in the colony was reserved for the General Court. Town officers were generally elected by ballot, though at times, for "dispatch of business," it would be voted to elect them by hand. General orders were passed by majority of hands held up, and in case of a vote for minister where a majority was certain to be in favor, a raising of hands was all that was necessary. Such meetings were after 1700 held quarterly, and later semi-annually, and now annually,[2] always, however, subject to a special call. In addition, there are scattered here and there among the minutes of town-meetings, records of constable's (freemen's) meetings and meetings of the townsmen.

[1] Wind. Rec., Dec. 13, 1658.

[2] The present law is that town-meetings shall be held annually some time in October, November, or December, and special meetings may be convened when the selectmen deem it necessary, or on the application of twenty inhabitants. Town-meetings may, however, be adjourned from time to time, as the interest of the town may require.

Rates and Fines.

The financial system of the towns was of a simple order, and few difficulties arose of a specially troublesome nature. In the beginning there was but one rate or tax levied on all the inhabitants by the town, which covered all the debts contracted of any nature. The creditors presented their accounts generally at the February meeting, and a rate was voted to cover them. Before 1688 the amount of the rate was stated as so many pounds, which was apportioned among the inhabitants for payment, but after that time the town voted a tax of so much on a pound, as "one half penny and one farthing on ye pound," "one penny farthing upon the pound." This covered the ordinary expenses. Those of an extraordinary nature, such as building a bridge or a meeting-house, seem to have been met by a special rate laid by the town, though all repairs were included among the regular town debts. But very soon there was separated from this general rate—and it was the first step in the separation process—the minister's salary, which was voted in the lump—so much for the minister and so much for his assistant, if he had one. For the collection of this a special officer was chosen, and all the people were taxed in proportion to their list of estate. This list was carefully made out and published from house to house. In addition to the rate, the minister was given on his settlement a grant of land, a certain share of the mill tolls, and his land was voted free from taxation. It is probable that he was paid semi-annually, once in September and again in March. Windsor tried for many years the system of voluntary subscriptions, appointing a committee to go from house to house to find out what each would give. This scheme was continued many years.[1] In 1680 the general statement was made regarding the whole colony—including, of course, New Haven—that nowhere was the minister's rate

[1] Wind. Rec., Nov. 11, 1662; Stiles, Windsor, p. 153.

less than £50, and in some towns it was as high as £90 and £100 a year.[1]

As early as 1642, Hartford voted £30 to be settled upon the school for ever,[2] though we cannot say that Wethersfield or Windsor made provision so early. In the latter town, in 1658, there was allowed out of the town rate £5 for the schoolmaster. Wethersfield the same year makes her first recorded provision somewhat more liberally. The first schoolmaster was to receive £25 for his teaching. A house and land was allowed him, but of the £25 the children were to give him eight shillings apiece and the town to make up the rest. Three years after the town appropriation was £8 and that of Windsor reduced to £4 10s. The payment by the scholars was at first by such as went to school, later all boys between five and ten years were taxed, "whether they go to school or not," and we find that all who sent children to school in winter between September and April were each to send a load of wood to keep them warm. Thus the provision for the school was at first twofold—appropriation by the town and payment by the scholars. Later, as the teacher received a definite amount, the town stated exactly how much it would give, and the remainder was made up by the scholars. This became the school rate, and every child between six and twelve was taxed according to the length of attendance. Servants taught were paid for by their masters. In 1701 a third source of supply was provided in what the records call the "cuntry pay," that is a tax of forty shillings laid on every thousand pounds of estate, collected by the constable, and handed over to those towns which maintained their schools according to law. This was the beginning of state support. The townsmen controlled all school matters either in person or by appointed committees, which became a regular official board about 1700. This system of town control lasted till the first quarter of the eighteenth century,

[1] Col. Rec. III, 300.

[2] Hartford Rec., Dec. 6, 1642.

when, with the separation of town and parish, the control of school matters fell into the hands of the ecclesiastical societies. Again a change was made with the system of dividing the town into districts, and the control is now in the hands of regular district committees, though there is a tendency to centralize the management by the institution again of town committees with general supervisory power.

In addition to these regular rates there were others of a minor and intermittent character; the seat rate, which corresponded to the present custom of sale of pews, with this difference, that as each was assigned his seat by a committee, he paid what he was told, and many worked off this rate by laboring for the town; the meadow rate for building the common fence; the watch rate, and other lesser ratings for unusual appropriations.

Many of the town and state expenses were met by fines. If the towns used whipping or the stocks, as did the court, their use is not recorded.[1] But fines were of regular ordering. There were fines for everything that the town forbade: for elders, briars or weeds in the highway, for leaving the meadow gates open, for neglecting fences, for having unruly cattle or runaway swine, for carrying off timber, from outsiders for felling trees, and from inhabitants for not working on common or highways; in fact for all neglects of town orders. Officers were fined for neglect of duty and for refusing to serve when elected.

Payment of all debts, of rates and of fines, was at first entirely in kind. Wheat, pease and Indian corn, sound, dry and well dressed, were employed, and rye came into use a little later. By 1695 the inhabitants were allowed to pay half in current money of New England, and soon this was extended to the privilege of paying all the rates in current money. But the depreciation of the currency was such that

[1] The towns certainly had stocks. The court ordered each town to have a public whipper. But there is no record that the towns used these for themselves. Perhaps they carried out the court orders.

by 1698 money would be taken at only two thirds of its face value. All money accounts were kept in pounds, shillings, pence and farthings, and a regular schedule of prices was made every few years, determining the value of the different qualities of grain. Smaller amounts, such as mill and ferry tolls, were probably paid in wampum at three, four and, later, six for a penny. The nature of the commodities was such that they were brought to the collector's house, which served as a sort of town treasury, and the town paid its debts from this fund.[1] The accounts of these collectors were often loosely kept, and the townsmen had difficulties in squaring accounts with them, for rates were difficult to collect, particularly in hard times, and the inhabitants were often in arrears. It was not until the end of the century that the collectors made annual reports and town finances were put on a systematic basis. Even the townsmen themselves did not always keep accounts in good order, and their successors in office often found affairs very mixed, though the towns differed in this according to the financial ability of their officers. Windsor apparently had the most conscientious officials. This town had a somewhat thorough way of dealing with her debtors. If the rate-payer did not hand in his due within reasonable time after the rate was published, a committee was appointed by the townsmen and given a note of the amount due. This committee was ordered to go to the houses of the delinquents, and, as the record says, "if they can find corn they shall take that in the first place, but if not, then what of any goods that come to hand (and give the owners three days liberty after to carry in the debts and withal 2d. in a shilling over and above the true debt or rate which belongs to them that distrayne towards their labors according to the order of the Court) and if they neglect to redeem the goods distrayned, that then they shall get it

[1] Windsor had a "Town Barn" built for this special purpose. Stiles, Windsor, p. 125.

prized by indifferent men and sell it and pay the debt and themselves and return what remains to the owners."[1] This is interesting as showing the way in which the towns applied the court orders, and how faithfully they worked in harmony with the policy laid down by the General Court in regard to all town matters.

Town and Colony.

We have now considered in some detail the characteristic features of the agrarian and civil life of this sturdy people. It was not essentially different from that existent among the other New England towns; such life was in its general features everywhere the same. On close examination, however, we find that the machinery of town and court administration can be classified as to whether it is pure or mixed, simple or complicated, natural or artificial. To Connecticut belongs the best of these conditions. Her town life was pure, simple and natural; the law which guided her political relations was nearer to the law which governs to-day than anywhere else on the American continent. We are apt to think of her settlement as an artificial importation, as one ready-made through the influence of pre-existent conditions. On the contrary, it was a natural growth; it passed through all the stages of gestation, birth, and youth to manhood. Beginning with the commercial stage, when trade was the motive power, it soon entered the agricultural stage, when the adventure lands were occupied by planters. With the development of this phase of its growth the military stage begins, when it became necessary to systematically arm against the Indians, and to turn the agricultural settlements into armed camps, with the people a body of trained soldiers. At this stage the organized religious life begins, when systematic church life arises with the infusion of new settlers; and last

[1] Wind. Rec., Dec. 10, 1659. For "the order of the Court," see Code of 1650, Col. Rec. I, 550.

of all is reached the civil or political stage, when for the first time the settlements may be fairly called organized towns. Now with these five factors—commercial, agricultural, military, religious, political—all active elements in the structural unity of the towns, we can understand why the need of some more exact and authoritative scheme of government was felt, and why the constitution of 1639 was adopted. We can also understand why such a document had not been drafted before; it was not a constitution struck off at one blow, but was in every article the result of experience. Two years previous the General Court had met, and without other right than that of all men to govern themselves, began to legislate in matters of general concern; the state dates its birth from this date. But not until the inhabitants composing that state had become accommodated to the new situation, and the separate settlements had become sufficiently developed to be used as units for popular representation, was a general system of government framed. We have said that every article in that constitution was based on experience, either in Massachusetts or Connecticut; the document as finally drafted was the result of the trial by democracy of itself. The people were experimenting, and as they experimented, the towns were growing and the state was taking shape. The very title "committees" of the first representatives is a clue to the yet unformed condition of the towns. This committee bore no distinctly official character, but was probably chosen by the people of the town—for as yet the principle of freemanship had not been established—to represent themselves, not the town, in the body which was to try the experiment of legislating for a self-governed community. Can we doubt that each town was managing its own affairs by committees of a not essentially different character from those sent to the General Court? It is at least a significant fact, that within an interval of two weeks preceding the crystallization of the state experiment in a written constitution, Hartford, the only town of which we have record, formulated the plan for its

permanent government, by the election of townsmen, and, what is more significant, by setting bounds and limitations to their power in seven prohibitive orders. Had not the people been experimenting in town government as well as state, and is it surprising that the permanent organization of the one almost exactly coincided with the permanent organization of the other? Far be it from us to take without warrant an attitude antagonistic to an historian who has done so much for Connecticut history, and whose political discernment is so superior to our own, but the whole bearing of this study has been to convince us that Prof. Johnston's theory that in Connecticut it was the towns that created the commonwealth; that in Connecticut the towns have always been to the commonwealth as the commonwealth to the Union, is entirely untenable. If Hartford, in every way the most precocious in rounding out her town system, did not begin that system till 1639 (N. S.), there is no doubt that the other towns, which in 1650 had but the beginnings of an official town system, were even later in development. How then can towns with an as yet hardly formed government, receiving and obeying orders from a central authority, their only permanent officers the appointees of that authority, be said to have sovereignty and independence? There were not three sovereignties, but one sovereignty, and that lay with the people. These people in their position as settlers in separate localities, and through those acting for them in the General Court, effected the erection of these localities into legal towns; and though these towns were used as convenient channels of representation and taxation, they never, either before or after the constitution, had complete local independence. As there were no sovereign towns, there could be no pre-existent town rights; such rights lay with the people, and they gave them up with but one reservation, as has been already stated in the first chapter. This constitution was not the articles of a confederation, although the people entered into "combination and confederation," in

which the peculiar nature of the settlements was recognized; but it was a government to order the "affairs of the people," "gathered together," "cohabitting and dwelling in and upon the River of Conectecotte and the Lands thereunto adjoyneing," to which government was granted "the supreme power of the commonwealth." Compare this expression with that in the first article of the Constitution of the United States, where the very phrase, "All legislative power herein granted," shows at once that the framers never considered the supreme power as belonging to the central government they were creating.

In turning from the historical to the legal aspect of the question, the discussion may be brief. This act of the people of Connecticut has been the basis of all judicial decisions. Two quotations will show the drift of such interpretation. In 1830 Chief Justice Daggett decided that the towns "act not by any inherent right of legislation, like the legislation of a State, but their authority is delegated."[1] Still more pertinent is the decision of Chief Justice Butler in 1864, who, referring to the surrender of power, says, "That entire and exclusive grant would not have left a scintilla of corporate power remaining in themselves as inhabitants of the towns, if any such had then existed"; and again, "And thus their powers, instead of being inherent, have been delegated and controlled by the supreme legislative power of the State from its earliest organization."[2]

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[1] Williard vs. Killingworth, 8 Conn. Reports, p. 247.

[2] Webster vs. Harwington, 32 Conn. Reports, pp. 136–139. Both of these cases were quoted by Roger Welles, Esq., in the *Hartford Courant*, Aug. 27, 1888, and will suffice for the argument in the text, but enlargement in a note may not be without profit. More fully, Chief Justice Daggett's opinion is as follows: "The borough and town are confessedly inferior corporations. They act not by any inherent right of legislation, like the legislature of the State, but their authority is delegated, and their powers therefore must be strictly pursued. *Within* the limits of their charter their acts are valid, *without* it they are void." July, 1830. The Webster vs. Harwington case was argued by Governor (now Judge) Andrews in 1864, who took the ground "that in a democratic govern-

So much, then, for the historical and legal side of the case. How was it in practice? Were the towns in Connecticut "almost as free as independency itself until near the period of the charter," as Prof. Johnston says, or were they controlled by the supreme legislative body of the state from

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ment, ultimate sovereignty resides with the people; the simplest municipal organization, viz. the towns, being the most purely democratic and voluntary, possess all power with which they have not expressly parted." This is the claim that Prof. Johnston makes of reserved rights in the towns. Chief Justice Butler in answer says, speaking of the Constitution of 1639, "That extraordinary instrument purports on its face to be the work of the people—the residents and inhabitants—the free planters themselves of the three towns. It recognizes the towns as existing municipalities, but not as corporate or independent, and makes no reservation, expressly or impliedly, of property or legislative power in their favor." (p. 137.) Again, in referring to the historical authorities quoted by the plaintiffs he says: "These views" (that the towns gave up a part of their corporate powers and retained the rest in absolute right) "have been expressed by [the historians] without sufficient reflection or examination, and are not correct in principle or sustained by our colonial records or by any adjudication of our courts" (p. 136). He also says, in speaking of the orders of October, 1639, which Prof. Johnston refuses to accept as anything more than a defining of privileges already possessed, and not as an incorporation or chartering of the towns (p. 76): "Now that provision enacted by the General Court in 1639 was both a grant and a limitation of vital power, and was intended to embrace towns thereafter created (as they were in fact) by law, and is utterly inconsistent with the idea of a reserved sovereignty, or of any absolute right in the towns and constituted the towns corporations, and the continuance of it has continued them so; and that provision, with the numerous special provisions then and since made, prescribing their officers and regulating their meetings and other proceedings, and imposing and prescribing their duties as subordinate municipal corporations, constitute their charters." Then follows the second quotation in the text (p. 139). For further similar judicial opinions see Higley vs. Bunce, Conn. Rep. 10, 442; New London vs. Brainard, Conn. Rep. 22, 555. In these cases there was no dissenting voice against the opinion of the Chief Justice by the associate judges of the Supreme Court. The suit of Webster vs. Harwington had already been decided by Judge Sandford in the Superior Court, against the theory of reserved rights. The attitude of Massachusetts and New York toward their towns is exactly the same. Bangs vs. Snow, Mass. Rep. I, p. 188; Stetson vs. Kempton et al., Mass. Rep. 13, p. 278; Statutes of 1785, ch. 75. For New York see Hodges vs. City of Buffalo, 2 Denio, p. 110; Revised Statutes I, p. 599, secs. 1, 3.

their earliest organization, as has just been quoted? The court almost at once, in the August or September following the adoption of the constitution, took measures to complete the organization of the towns, through the agency of a court committee appointed for that purpose, and on the presentation of their report, in the October following, passed the orders which they had drawn up. In these orders and those frequently passed afterward—we are speaking of the period preceding the charter—can be found all the rights that the towns were possessed of. Every officer chosen except the townsmen can be traced to these orders, as well as every privilege exercised of which the town records give us knowledge. The allowance was liberal, and the towns never exceeded, and in some cases did not wholly exhaust, the powers granted them. Even within these orders the court occasionally interfered. It ordered regarding highways, fences, and unruly animals; decided the boundaries of the towns, refused the right of town suffrage to such as had been whipped or fined for scandalous offenses; even made grants of town lands; settled the ferry rates of Windsor, gave orders to her deacons; interposed in the ecclesiastical affairs of Wethersfield; ordered the establishment of town inns; commanded the payment of bounties, and showed its authority in many other similar ways. It also controlled all the military and commercial affairs of the towns. In other words, the General Court directly controlled all matters not expressly delegated to the towns, and even in those matters it interfered, though rarely. That this was as true in practice as in theory, a careful study of the town records enables us to affirm.

What an actual reservation of rights was may be seen in the case of Southhampton, which, settled in 1640, came under the jurisdiction of Connecticut in 1644. As for these four years it had been an independent church-state, it had some right, made more decided by its peculiar situation on Long Island, to introduce into the agreement a distinct reservation

of power. Its inhabitants were given "liberty to regulate themselves according as may be most suitable to their own comforts and conveniences in their own judgment," and power was reserved for all time "for making of such orders as may concerne their Towne occations."[1] This, by force of contrast, makes clear how different the position of the river towns actually was in the eyes of the court.

Nor did the towns themselves fail to recognize this position of complete subordination to the General Court. It might be sufficient to say, as substantiating this, that they never overstepped their boundaries, but a concrete expression of their opinion is more conclusive. Windsor was much troubled because the people neglected their fences, from which many complaints had resulted, and says "that we cannot but see it the cause of many trespasses and discord among neighbors, and therefore, as we should desire and endeavor the peace and comfort of one another," it proceeds to regulate the matter, adding almost parenthetically: "The court having left the care and ordering of things of this nature to the care of the townsmen in the several towns."[2] If this was the situation up to the time of the charter, much more was it so in the period following, when, with the growth of towns and commonwealth, colonial organization became more complicated and new conditions were constantly arising. That

[1] Col. Rec. I, p. 567, Appendix II. Compare the historic beginnings of the Connecticut towns with those of Rhode Island, of which it can be truly said, as does the historian of that State, "In Rhode Island each town was itself sovereign, and enjoyed a full measure of civil and religious freedom."—Arnold's Hist. of Rhode Island, I, p. 487.

[2] Wind. Rec., March 21, 1659. The only instance that the writer can find of an unwillingness to obey a court order was when the court, apparently unjustly, refused to ratify the election of Mr. Mitchell, a weighty landholder of Wethersfield, who had been elected to the office of Recorder. The court declared the office vacant and ordered a new balloting. The town refused compliance, and Mr. Mitchell entered upon his office. In answer to this the court promptly fined him twenty nobles, and that part of the town which voted for him five pounds.—Col. Rec. I, pp. 40, 51–53.

town and court relations had not changed it is almost unnecessary to state.[1] To attempt to prove it by example would be tedious and add little that was new. It may all be summed up in two quotations, which bring into sharp contrast the relation of the town to the colony, as compared with that of the State to the American Congress. When East Hartford wished the liberty of a minister in 1694, Hartford, though loath to part with "their good company," yielded gracefully and said, that "if the General Court see cause to overrule in this case, we must submit."[2] But when it was rumored in 1783 that the Congress of the Confederation was overstepping its privileges, the town passed, among others, the following article. Addressing the State delegates, it said, "And first (Gentlemen) we desire and expressly instruct you to oppose all Encroachments of the American Congress upon the Sovereignty and Jurisdiction of the separate States, and every Assumption of Power not expressly vested in them by the Articles of Confederation."[3]

Far more worthy of admiration, and nobler in its accomplishment, was the relation which actually did exist between the town and the court in the colony of Connecticut. Its boasted democracy becomes almost greater in the practice than in the conception. This we realize when we see a body endowed with supreme power, unrestrained by any authority on earth, exercising that power with such moderation and remarkable political sagacity that the town appears as almost an independent unit. If an institution is the lengthened shadow of one man, then here we see Thomas Hooker with the king in

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[1] "The royal charter was a precious gift and came to be the object of almost superstitious regard. But it did not in any way affect the relations previously established between the people and their chosen rulers. The frame of government continued to rest on the same broad foundation on which the Constitution of 1639 had placed it, and 'the supreme power of the Commonwealth' was made to consist, as before, in the general court." Trumbull's Hist. Notes on the Constitution of Connecticut, pp. 10–11.

[2] Hart. Rec. I, p. 178.

[3] Hart. Rec. II, p. 301. For the nature of this encroachment see Curtis. Hist. of the Constitution, I, p. 190; Trumbull's Hist. Notes, p. 18.